Sr. THOMAS SMITH.

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# THE COMMON-WEALTH OF *ENGLAND*, AND THE MANER OF Gouernement thereof.

COMPILED BY THE HONOVRABLE Sir THOMAS SMITH, Knight, Doctor of both Lawes, *and one of the principall Secretaries vnto two moſt worthy* Princes, King EDWARD, and Queene ELIZABETH.

With new Additions of the chiefe Courts in ENGLAND, *And the Offices thereof by the ſaid Author. Alſo a Table* added thereto, of all the principall matters contained in this Treatiſe.

*Newly Corrected and Amended.*

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# To the Reader.

TO conceale the graces inſpired by God, or the gifts ingraffed by nature, or the vertues atchieued vnto our ſelues by induſtrie, in all ages, and of all wiſe men, was accounted vndutifulneſſe, vnkindneſſe, and impietie vnto that Commonwealth, in the which, and vnto the which we are both bredde and borne: but to ſuppreſſe the worthy workes of any Authour, may iuſtly bee iudged not onely iniurie to the perſon, but euen enuie at the whole world. Wherefore, chauncing vpon this ſhort diſcourſe compiled by the Honourable Knight Sir Thomas Smith, and conſidering that the ſame could not but be a great light to the ignorant, and no leſſe delight vnto the learned in the Lawes and Policie of ſundrie Regiments: I thought it part of my duetie, as well for the reuiuing of the fame of ſo notable a man, as for the publike imparting of ſo pithy a Treatiſe, to preſent the ſame vnto thy indifferent and diſcreet iudgement. Wherein, although the errours and raſhneſſe of ſcribes, appearing in the contrarietie, and corruption of Coppies, hauning both by the length of time ſince the firſt making, as alſo by the often tranſcripting, might iuſtly haue beene mine excuſe, or rather diſcharge: yet weighing the authoritie of the Au-

*thor together with the grauity of the matter, I made no doubt but that the reuerence due vnto the one, and the recompence deserued by the other, would easily counteruaile all faults committed by a Clarke and Writer. And whereas some termes or other matters may seeme to dissent from the vsuall phrase of the common lawe of this Realme: notwithstanding, to him that will consider that the profession of the maker was principally in the ciuill lawes, and therfore not to be expected as one excellent in both, & also that the finishing of this worke was in Fraunce, farre from his Library, and in an ambassage, euen in the midst of waighty affaires, it cannot, nor ought not without great ingratitude be displeasant, or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale, and this honorable mans trauaile, assuring thy selfe that the same framed by an expert workmaister, and forged of pure and excellent mettall, will not faile in proouing to be a commodious instrument.*

Vale

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# THE MANER OF GOVERNMENT

## Or Policie of the Realme of ENGLAND.

### CHAP. I.

### Of the diuerſities of Common-wealths or Gouernments.

THey that haue written heere-tofore of Common wealths, haue brought them into three moſt ſimple and ſpeciall kindes or faſhions of gouernment. The firſt, where one alone doth gouerne, is called of the Græks Μοναρχία, The ſecond, where the ſmaller number, commonly called of them Ἀριστοκρατία, and the third, where the multitude doth rule, Δημοκρατία. To rule is vnderſtood to haue the higheſt and ſupreame authoritie of commaundement. That part or member of the common-wealth is ſaide to rule, which doth controll, correct, and direct all other members of the Common-wealth. That parte which doth rule, define and commaunde according to the forme of the gouernement, is taken in euerie Com-

Democrat. Monarchia Ariſtocratia.

mon wealth to bee iuſt and Law: As a rule is alway to bee vnderſtood to bee ſtraight, and to which all worke are to be conformed, and by it to be iudged: I do not meane the Lesbians rule, which is conformed to the ſtone: but the right rule whereby the Artificer and the Architect do iudge the ſtraightnes of euery mans worke, hee to be reckoned to make his worke perfecteſt, who goeth neereſt to the ſtraightneſſe.

## Chap. II.

### What is iuſt or Lawe in euery Common-wealth or gouernment.

NOw it doth appeare, that it is profitable to euery Common-wealth (as it is to euery thing generally and particularly) to be kept in her moſt perfect eſtate. Then if that part which doth beare the rule, doe commaund that which is profitable to it, and the commaundement of that part which doth rule on that ſort, is to be accepted in euery Common wealth reſpectiuely to be iuſt (as wee haue ſaid before) it muſt needes follow, that the definition which Thraſimachus did make, that to be iuſt, which is the profite of the ruling and moſt ſtrong part (if it be meant of the citie or Common-wealth) is not ſo farre out of the way, if it be ciuilly vnderſtoode, as Plato would make it. But as there is profit, and likelihood of profit, ſo there is right and likelihood of right. And as well may the ruling and ſoueraigne part commaund that which is not his profite, as the iuſt man may offend (notwithſtanding his iuſt & true meaning) when he would amend that which is amiſſe, and helpe the Common-wealth, and to doe good vnto it. For in as much as hée attempteth to doe contrary to the Lawe which is already put, hée therefore by the Law is iuſtly condemned, becauſe his doing is contrary to the

Iuſt.

to the Law and the ordinance of that part which doth commaund.

## Chap. III.

### Another Diuision of Common-wealths.

But this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude or greater number, they which haue more methodically and more distinctly & perfitly written vpon them, doe make a subdiuision: and diuiding each into two, make the one good and iust, and the other euill and vniust: as, where one ruleth, the one they call a King, or Βασιλεὺς, the other τύραννος, a Tyrant: where the fewer number, the one they name a Gouerning of the best men Ἀριστοκρατίαν or *Remp. Optimatum*, the other of the vsurping of a few Gentlemen, or a few of the richer and stronger sort, ὀλιγαρχίαν, or *Paucorum Potestatem*: and where the multitude doth gouerne, the one they call a Common-wealth by the generall name πολιτείαν, or the rule of the people Δημοκρατία, the other, the rule or the vsurping of the popular, or rascall or viler sorte, because they bee moe in number, Δημοκρατίαν ἀπαγῆ.

## Chap. IIII.

### Examples of changes in the manner of Gouernment.

In Common-wealths which haue had long continuance, the diuersities of times haue made all these maners of ruling or Gouernement to bee seene: as in *Rome*, Kings Romulus, Numa, Seruius, tyrants, Tarquinius, Sylla, Cæsar: the rule of best men, as in time when the first Consuls were: and the vsurping of a few, as of the Senators after the death of Tarquinius, and before the succession or

the Tribunate, and manifestly in the Decem-virate, but more pernitiously in the Triumuirate of Cæsar, Crassus, and Pompeius: and afterward in the Triumuirate of Octauius, Antonius, and Lepidus: The Common-wealth and rule of the people, is in the expulsing of the Decemuiri, and long after, especially after the lawe was made, eyther by Horatius, or (as some would haue it) Hortensius *quod plebs sciuerit, id populum teneat*: And the ruling and vsurping of the popular and rascall, as a little before *Sylla* his raigne, and a little before Caius Cæsars raigne. For the vsurping of the rascality can neuer long endure, but necessarily breedeth, and quickly bringeth forth a tyrant. Of this hath Athens, Siracuse, Lacedemon and other olde ancient ruling Cities had experience, and a man need not doubt but that other Common-wealths haue followed the same rate. For the nature of man is, neuer to stand still in one manner of estate, but to grow from the lesse to the more, and decay from the more againe to the lesse, till it come to the Fatal end and destruction, with in any turnes, and turmoiles of sicknes, and recouering, seldome standing in a perfect health neither of a mans bodie it selfe, nor of the politicke body which is compact of the same.

## Chap. V.

### Of the question what is right and iust in a Common-wealth.

SO when the Common-wealth is euill gouerned by an euill ruler and vniust (as in the three last named which bee rather a sicknesse of the politicke bodie, than perfect and good estates) if the lawes bee made, as most like they bee alwaies, to maintaine that estate: the question remaineth, whether the obedience of them be iust, and the disobedience wrong? the profite & conseruation of that estate right

right and iuſtice, or the diſſolution? and whether a good & vpright man, and louer of his countrey ought to maintaine and obey them, or to ſeeke by all meanes to aboliſh them? which greate and haughty courages haue often attempted: as Dion to riſe vp againſt Dionyſius, Thraſibulus againſt the thirty tyrants, Brutus and Caſſius againſt Cæſar, which hath bẽ cauſe of many commotions in Common-wealths: whereof the iudgement of the common people is according to the euent and ſucceſſe: of them which be learned according to the purpoſe of the doers, and the eſtate of the time then preſent. Certaine it is, that it is alwaies a doubtfull and hazardous matter to meddle with the changing of lawes and gouernement, or to diſobey the orders of the rule or gouernement, which a man doth finde already eſtabliſhed. nota

## Chap. VI.

That Common-wealths or gouernments are not moſt commonly ſimple, but mixt.

NOw although the gouernments of Common-wealths bee thus diuided into three, and cutting each into two, ſo into fiue: yet you muſt not take that ye ſhall find any Common-wealth or gouernment ſimple, pure, and abſolute in his ſort and kind, but as wiſe men haue diuided for vnderſtandings ſake, and fantaſied foure ſimple bodies which they call elements: as fire, ayre, water, earth, and in a mans body foure complexions or temperatures, as cholericke, ſanguine, flegmatique and melancholicke: not that ye ſhall finde one vtterly perfect without mixtion of the other, for that nature almoſt will not ſuffer: but vnderſtanding doth diſcerne each nature as in his ſinceritie: ſo ſeldome or neuer ſhall you finde common-wealths or gouernments which

are absolutely and sincerely made of any of them aboue named, but alwaies mixed with another, and hath the name of that which is more, and ouer-ruleth the other alwaies or for the most part.

## Chap. VII.

### The definition of a King, and of a Tyrant.

VVHere one person beareth the rule, they define that to bee the state of a King, who by succession or election commeth with the good will of the people to that Gouernement, and dooth administer the Common-wealth, by the Lawes of the same, and by equity, and doth seeke the profit of the people as much as his owne. A Tyrant they name him, who by force commeth to the monarchy against the will of the people, breaketh lawes already made, at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe his faction and kindred. These definitions doe containe three differences: the obtaining of the authoritie the manner of administration thereof, and the Butte or marke whereunto it doth tend and shoote. So as one may bee tyrant by his entry and getting of the Gouernment, and a King in the administration thereof. As a man may thinke of Octauius, and peraduenture of Sylla, For they both comming by tyrannie and violence, to that state, did seeme to trauaile very much for the better order of the Common-wealth: howbeit, either of them after a diuers maner. Another may bee a King by entry and a tyrant by administration, as Nero, Domitian, and Commodus: for the Empire came to them by succession. But their administration was vtterly tyrannicall, of Nero after fiue yeeres, of Domitian and Commodus very shortly vpon their new honour. Some both in the comming

ming to their Empire, in the Butt the which they shoot at, be Kings, but the manner of their ruling is tyrannicall, as many Emperors after Cæsar and Octauius, and many Popes of Rome. The Emperors claime this tyrannicall power by pretence of that Rogation or *Plebiscitum*, which Caius Cæsar or Octauius obtained, by which all the people of Rome did conferre their power and authority vnto Cæsar wholy.

The Pope groundeth his from Christ (*cui omnis potestas data est in cælo & in terra*) whose successor he pretendeth to be: yet the generall Councels make strife with him, to make the Popes power rather *Aristocratiam*, or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men doe iudge the same of the Kings of Fraunce and certaine Princes of Italy and other places, because they make and abrogate lawes and Edicts, lay on tributes and impositions of their owne will, or by the priuate counsell and aduise of their friends and fauourers onely, without the consent of the people. The people I call that which the word *Populus* doth signifie, the whole body, and the three estates of the Common-wealth: and they blame Lewes the xi. for bringing the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyrannicall power and gouernment. He himselfe was wont to glorie and say, he had brought the crowne of Fraunce, *hors de page*, as one would say, out of wardship.

## Chap. VIII.

### Of the absolute King.

Other doe call that kind of administration which the Greeks do cal παμβασιλείαν, not tyrannie, but the absolute power of a King, which they would pretend that euery King hath, if he would vse the same. The o-

ther they call βασιλείαν νόμων, or the royall power, reggulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessary: so in time of peace the same is very dangerous, as well to him that doth vse it, and much more to the people vppon whome it is vsed: whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who woulde not suffer any man to kepe the Dictatorishipp aboue fiue monethes, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, Aristotle, (who of all writers hath most absolutely and methodically treated of the diuision and natures of common-wealthes) maketh this sort of gouernment to be one kinde of kinges. But all commeth to one effect: for at the first all kings ruled absolutely, as they who were either the heades and most auncient of their families, deriued out of their owne bodies, as Adam, Noe, Abraham, Iacob, Esau, reigning absolutely ouer their owne children & bondmen, as reason was: or else in the rude world amongst barbarous & ignorant people, some one then, whome God had endued with singular wisdome to inuent things necessary for the nourishment and defence of the multitude, & to administer iustice, did so farre excell other, that all the rest were but beastes in comparison of him: and for that excellencie, willingly had this authority giuen him of the multitude, and of the Gentiles when he was dead and almost when he was yet liuing was taken for a God, or others for a Prophet. Such among the Iewes were Moses, Ioshua, and the other Iudges, as Samuel, &c. Romulus, and Numa amongst

amongſt the Romanes, Lycurgus and Solon, and diuers others among the Greeks, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Greeks, is called τυραννις which of it ſelfe at the firſt was not a name odious: But becauſe they who had ſuch rule, at the firſt, did for the moſt part abuſe the ſame, waxed inſolent and proud, vniuſt, and not regarding the Common-wealth, committed ſuch acts as were horrible and odious: As killing men without cauſe, abuſing their wiues and daughters, taking and ſpoyling all mens goods at their pleaſures, and were not Shepheards as they ought to bee, but rather robbers and deuourers of the people; whereof ſome were contemners of God, as Dioniſius, otherwiſe they liued like Diuels, and would yet be adored and accounted for Gods: as Caius Caligula and Domitian: that kinde of adminiſtration, and maner alſo, at the firſt not euill, hath taken the ſignification, and definition of the vice of the abuſers, ſo that now both in Greeke, Latine, and Engliſh, a tyrant is counted he, who is an euil King, and who hath no regard to the wealth of his people, but ſeeketh onely to magnifie himſelfe, and his, and to ſatisfie his vicious and cruell appetite without reſpect of God, of right, or of the Law: becauſe that for the moſt part, they which haue had that abſolute power, haue beene ſuch.

## Chap. IX.

### Of the name of King, and the adminiſtration of England.

That which we call in one ſillable King in Engliſh, the olde Engliſhmen, and the Saxons, from whom our tong is deriued, to this day call in two ſillables, Cyning, which whether it commeth of Cen or Ken, which

betokeneth to knowe and vnderstand, or Can, which betokeneth to be able, or to haue power. I cannot tell. The participle absolute of the one wee vse yet, as when wee say, a cunning man *Vir prudens aut sciens*: the verbe of the other, as I can doe this, *possum hoc facere*. By olde and ancient Hiſtories that I haue read, I doe not vnderstand that our Nation hath vſed any other generall authority in this Realme, neither *Ariſtocraticall* nor *Democraticall*, but onely the royall and Kingly Maieſtie which at the firſt was deuided into many and ſundry Kings, each abſolutly raigning in his Country, not vnder the ſubiection of other, till by fighting the one with the other, the ouercommen alwaies falling to the augmentation of the vanquiſher and ouercommer: At the laſt the Realme of England grew into one Monarchie. Neither any one of thoſe Kings, neither he who firſt had all, toke any inueſtiture at the hands of the Emperour of Rome, or of any other ſuperiour or ſoraine Prince, but held of God to himſelfe, and by his ſword, his people and Crowne, acknowledging no Prince on earth his ſuperior, and ſo it is kept and holden at this day: Although King Iohn (by the rebellion of the Nobilitie, aided with the Dolphin of France his power) to appeaſe the Pope, who at that time poſſeſſing the conſciences of his ſubiects, was then alſo his enemie, and his moſt greiuous torment (as ſome Hiſtories doe witneſſe) did reſigne the Crowne to his Legate Pandulphus, and toke it againe from him, as from the Pope, by faith and homage, and a certaine tribute yerely. But that act being neither approued by his people, nor eſtabliſhed by act of Parliament, was forthwith, and euer ſithence taken for nothing, either to binde the King, his ſucceſſors, or ſubiects.

Chap.

## Chap. X.

### What is a Common-wealth, and the parts thereof.

TO bee vnderstoode hereafter, it is necessary yet to make a third diuision of the common-wealth, by the parts thereof. A common-wealth is called a societie or Common doing of a multitude of free men, collected together, and vnited by common accord and couenants among themselues, for the conuersation of themselues, as well in peace as in warre. For properly an Hoast of men is not called a Common-wealth, but abusiuely, because they are collected but for a time, & for a fact which done each diuideth himselfe from others as they were before. And if one man had, as some of the old Romanes had (if it bee true that is written) fiue thousand, or ten thousand bondmen whom he ruled well, though they dwelled all in one City, or were distributed into diuers villages, yet that were no Common-wealth: for the bondman hath no communion with his maister, the wealth of the Lord is onely sought for, and not the profite of the slaue or bondman. For as they who write of these things haue defined, a bondman or slaue as it were (sauing life or humane reason) is but the instrument of his Lord, as the axe, the saw, the chessill & gowge is of the Carpenter. Truth it is, the Carpenter looketh diligently to saue, correct, & amend al these: but it is for his owne profit, and in consideration of himselfe, not for the instrument sake. And as these be instruments of the Carpenter, so the Plow, the Cart, the Horse, Oxe, or Asse, be instruments of the Husbandman: and though one Husbandman had a great number of all these, and looked well to them, it made no Common-wealth, nor could not be so called. For the priuate wealth of the husbandman is only regarded, and there is no mutuall society or portion, nor law, nor pleading betweene

the one and the other. And (as he saith) what reason hath the pot to say to the Potter, why madest thou mee thus? or why dost thou breake me after thou hast made me? euen so is the bondman or slaue which is bought for mony, for he is but a reasonable and liuing instrument, the possession of his Lord & master, reckoned among his goods, not other wise admitted to the society cuill, or Common-wealth, but is part of the possession and goods of his Lord. Wherefore, except there bee other orders and administrations amongst the Turkes, if the prince of the Turks (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely free men) a man may doubt whether his administration bee to be accounted a Common-wealth, or a Kingdome, or he rather to bee reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whome there is no right, Lawe, nor Common-wealth compact, but onely the will of the Lord and Segnior. Surely none of the old Greeks would call this fashion of gouernment, *Remp.* or Πολιτειαν for the reasons which I haue declared before.

## Chap. XI.

### The first sort, or beginning of an house or Family, called οἰκονομία.

Then if this be a society, and consisteth onely of free-men, the least part thereof must be two. The naturallest, and first coniunction of two, toward the making of a further society of continuance, is of the husband and of the wife, after a diuers sort, each hauing care of the family, the man to get, to trauaile abroad, to defend; the wife to saue that which is gotten, to tarry at home, to distribute that which commeth of the husbands labour, for the nurriture of the children: and family of them both

and

and to keepe all at home neate and cleane. So nature hath forged each part to his office: the man ſtern, ſtrong, bold, aduenturous, negligent of his beauty, and ſpending. The woman weake, fearefull, faire, curious of her beauty and ſauing. Either of them excelling other in wit and wiſedome, to conduct thoſe things which appertaine to their office, and therefore where their wiſedome doth excell, therein it is reaſon that each ſhould gouerne. And without this ſociety of man and woman, the kind of man could not long endure. And to this ſociety men are ſo naturally borne, that the Prince of all Philoſophers, in conſideration of natures, was not afraid to ſay, that a man by nature is rather deſirous to fellow himſelfe to another and ſo to liue in couple, then to adhere himſelfe with many. Although of all things, or liuing creatures, a man doth ſhew himſelfe moſt politique, yet can hee not well liue without the ſociety and fellowſhip ciuill. Hee that can liue alone, ſaith Ariſtotle, is either a wild beaſt in a mans likenes, or elſe a God rather then a man. So then the houſe and family is the firſt & moſt naturall (but priuate) apparance of one of the beſt kinds of a common-wealth, that is called Ariſtocratia, where a fewe, and the beſt do gouerne: & where not one alwaies, but ſomtime and in ſome thing another doth beare the rule. Which to maintaine for his part, God hath giuen to the man greater wit, bigger ſtrength, and more courage, to compell the woman to obey by reaſon, or force: and to the woman beauty, faire countenance, and ſweet words, to make the man obey her againe, for loue. Thus each obayeth and commaundeth other, and they two together rule the houſe. The houſe I call heere the man, the woman, their children, their ſeruants bond and free, their cattle, their houſhold ſtuffe, and all other things, which are reckoned in their poſſeſſion, ſo long as all theſe remaine together in one, yet this cannot be called Ariſtocratia, but Metapho-

Domus, ſeu familia.

taphorice, for it is but an house, and little sparke resembling as it were that gouernement.

## Chap. XII.

### The first and naturall beginning of a Kingdome: in Greeke βασιλεία

But for so much as it is the nature of all things, to encrease or decrease: this house thus encreasing & multiplying by generation, so that it cannot wel be comprehended in one habitation, & the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out into couples as it were by prouining or propagation. And the child by mariage beginneth as it were to roote towards the making of a new stocke, and thereupon another house or family. So by this propagation or prouining first of one, and then of another, and so from one to another, in space of time of many houses was made a streete or village: of many streetes and villages ioined together, a Citie or Borough. And when many Cities, Boroughs, and Villages, were by common and mutuall consent for their conuersation ruled by that one and first father of them al, it was called a Nation or Kingdome. And this seemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all ciuill societies. For so long as the great Grandfather was aliue and able to rule, it was vnnaturall for any of his sonnes or of-spring to striue with him for the superiority, or to goe about to gouerne, or any wise to dishonor him, from whom he had receiued life and being. And therefore such a one doth beare the first and naturall example of an absolute, and perfect King. For he loued them as his owne children and Nephewes, cared for them as members of his

Prouining, or propagation is when a man layeth a brãch of a Vine or Osier, or any other tree into the ground so that it taketh roote of it selfe, and may liue though it bee cut clean from the first roote or stock Pagus Oppidum. Ciuitas. Regnũ.

his owne body, prouided for them as one hauing by long time more experience then any one, or all of them. They againe honoured him as their father of whose body they came, obayed him for his greate wisedome and fore cast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe vsed nouriture: For each paine put vpon them, hee esteemed as laide vpon himselfe.

## Chap. XIII.

### The first and naturall beginning of the rule of a few of the best men, called in Greeke Aristocratia.

But when that great Graundfather was dead, the sonnes of him, and brethren amongst themselues, not hauing that reuerence to any, nor confidence of wisdome in any one of them, nor that trust the one to the other, betweene whome (as many times it faeeth with brethren) some strifes and brawlings had before arisen: To defend themselues yet from them which were Welch & strangers; necessarily agreed among themselues to consult in common, and to beare rule for a time in order, now one: and now another: so that no one might beare alwaies the rule, nor any one be neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the next (being either wiser of himselfe, or else by his brothers error and fault) amended it. And in the meane while, at diuers and most times when vrgent necessity did occurre, they consulted all those heades of families together within themselues, how to demeane and order their matters best for the conseruation of themselues, and each of their families generally and particularly. Thus a few being heades, and the cheefe of their families, equall in birth and Nobilitie, and not much different in riches,

gouerned (heir own houſes, and the deſcendants of them particularly, and conſulted in common vpon publique cauſes, agréing alſo vpon certaine lawes and orders to be kept amongſt them. So the beſt, chiefeſt, and ſageſt did rule, and the other part had no cauſe to ſtriue with them, nor had no cauſe nor apparance to compare with any of them, neither for age nor diſcretion, nor for riches or nobility. The rulers ſought each to kéepe and maintaine their poſteritie, as their ſonnes and Nephewes, and ſuch as ſhould ſucceéde them, and carry their names when they were dead, and ſo render them being mortall by nature, immortall by their fame and ſucceſſion of poſterity: hauing moſt earneſt care to maintaine ſtill this their couſinage and common family, as well againſt forraigne and barbarous Nations, which were not of their progeny, tongue, or Religion, as againſt wilde and ſauage beaſtes. This ſéemeth the natural courſe and beginning, or image of that rule of the fewer number, which is called of the Gréekes Ἀριστοκρατία, and of the Latines Optimatum reſpublica.

## Chap. XIIII.

### The firſt originall, or beginning of the rule of the multitude called πολιτία or Δημοκρατία.

NOw, as time bringeth an end of all things, theſe brethren being all dead, and their offſpring increaſing daily to a great multitude, and the reuerence due to the old fathers in ſuch and ſo great number of equals fayling, by the reaſon of the death or doting of the Elders: each owing their merits of education a part to their Fathers and Graundfathers, and ſo many ariſing, and ſuch equalities among them, it was not poſſible that they ſhould be content to be gouerned by a few. For two things being ſuch as for the which men in ſocietie and

league

league muſt ſtriue, that is, honour and profit, no men of free courage can be contented to be neglected therein, ſo that they were faine of neceſſitie to come to that, that the more part ſhould beare the price away in election of Magiſtrates and rulers. So that either by courſe or by lot, each man in turne might be receiued to beare rule, and haue his part of the honour: and (if any were) of the profite which came by adminiſtration of the Common-wealth. For whoſoeuer came of that olde great Graundfathers race, he accounted himſelfe as good of birth as any other. For ſeruice to the Common-wealth, all, or ſuch a number had done it, as they could not be accounted few. And if a few would take vpon them to diſcurpe ouer the reſt, the reſt conſpiring together would ſone be Maiſters of them, and ruinate them wholy. Whereupon neceſſarily it came to paſſe, that the Common-wealth muſt turne and alter as before from one to a few, ſo now from a few to many and the moſt part, each of theſe yet willing to ſaue the politicke bodie, to conſerue the authority of their nation, to defend themſelues againſt all other, their ſtrife being onely for Empire and rule, and who ſhould doe beſt for the Common-wealth, whereof they ſhould haue experience made by bearing office and being Magiſtrates. This I take for the firſt and naturall beginning of the rule of the multitude, which the Greekes called Δημοκρατία: the Latines, ſome *Reſpublica* by the generall name, ſome *Populi poteſtas*, ſome *Cenſus poteſtas*, I cannot tell howe latinely.

## Chap. XV.

That the Common-wealth or policy, muſt be according to the nature of the people.

By this proceſſe and diſcourſe it doth appeare that the mutations and changes of faſhions of gouernment in

Common wealths bee naturall, and doe not alwayes come of ambition or malice: And that according to the nature of the people, so the Common-wealth is to it fit and proper. And as all these three kindes of Common-wealths are naturall, so when to each party or espece and kinde of the people, that is applyed which best agreeth, like a garment to the bodie, or shoe to the foote, then the bodie politicke, is in quiet, and findeth ease, pleasure and profite. But if a contrarie forme be giuen to a contrarie maner of people, as when the shoe is to little or to great for the foote, it doth hurt and incomber the conuienent vse thereof, so the free people of nature tyrannized or ruled by one against their willes, were he neuer so good, either faile of courage and ware seruile, or neuer rest vntill they either destroy the King and them that would subdue them, or be destroyed themselues. And againe, another sort there is, which without being ruled by one Prince, but set at libertie, cannot tell what they should doe, but either through insolencie, pride, and idlenes, will fall to robberie, and all mischiefe, and to scatter and dissolue themselues, or with foolish ambition and priuate strife consume one another, and bring themselues to nothing Of both these two we haue Historyes inough to beare witnesse, as the Grekes, Romanes, Samnites, Danes, Vandalles, and others Yet must you not thinke that all Common-wealths, administrations & rulings, beganne on this sort, by prouining or propagation, as is before written: But many times after a great battaile and long warre, the Captaine who led a multitude of people gathered peraduenture of diuers Nations and Languages, liking the place which he hath by force conquered, tarieth there, and beginneth a Common-wealth after this maner, and for the most part a Kingdome. As the Gothes and Lumbards in Italie, the Frenchman in Gaule, the Sarasins in Spaine, and part of France, the Sarens

Græci.
Romani.
Samnites.
Vandali.
Dani.
Norwegi.
Sueci.

Saxons in great Britaine, which is now called England: Of which, when that one and chiefe Prince is dead, the nobler sort consult among themselves, and either chose another head and King, or divide it into more heads and rulers, so did the Lumbards in Italy, and the Saxons in England: or take at the first a common rule and popular estate, as the Zwitzers did in their cantons and do yet at this day, or else admit the rule of a certaine few excluding the multitude and communaltie, as the Paduans, Veronenses, and Venetians have accustomed.

## Chap. XVI.

### The division of the parts and persons of the Common-wealth.

TO make all things yet cleere before, as we shall go, there ariseth another division of the parts of the Common-wealth. For it is not enough to say that it consisteth of a multitude of houses and familes, which make streets and villages, and the multitude of the stretes and villages make townes, and the multitude of townes the Realme, and that freemen be considered onely in this behalfe, as subiects and Citizens of the Common wealth, and not bondmen, who can beare no rule nor iurisdiction ouer freemen, as they who bee taken but as instruments and the goods and possessions of others. By which consideration also we doe reiect women, and those whom nature hath made to keepe home and to nourish their familie and children, and not to meddle with matters abroad, nor to beare office in a Citie or Common-wealth, no more than Children and infants: except it be in such cases as the authoritie is annexed to the blood and progenie, as the Crowne, a Duchy, or an Eriedome: for there the blood is respected, not the age nor the sere.

Whereby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being maried to a King, Duke or Earle, but by being the true, right and next successors in the dignitie, and vpon whom by right of the blood that title is descended: These I say, haue the same authoritie although they be women or children in that Kingdome, Dutchie, or Earledome, as they should haue had if they had beene men of full age. For the right and honour of the blood, and the quietnes and suertie of the Realme, is more to be considered, then either the tender age as yet impotent to rule or the sexe not accustomed (otherwise) to intermeddle with publicke affaires, being by common intendment vnderstood, that such personages neuer doe lacke the councell of such graue and discreete men as bee able to supply all other defects. This (as I saide) is not enough: But the Diuision of these which be participant of the Common-wealth, is one way of them that beare office, the other of them that beare none: The first are called Magistrates, the second priuate men. Besides, the like was among the Romaines of *Patricii* and *Plebei*, the one striuing with the other a long time, the *Patricii* many yeeres excluding the *Plebei* from bearing rule, vntil at last al Magistrats were made common between them: yet was there another diuision of the Romans, into *Senatores*, *equites*, and *plebs*: the Greeks had also εὐγενεῖς καὶ Δημοτικοῦς. The French haue at this day, les nobles & la populaire, or gentill homes & villaines: we in England deuide our men commonly into foure sorts, Gentlemē, Citizens, Yeomen, Artificers and Labourers, of Gentlemen the first and cheife are the King, the Prince, Dukes, Marquises, Earles, Vicounts, Barrons, and these are called κατ' ἐξοχὴν the Nobilitie, and all these are called Lordes and Noblemen: next to these be Knights, Esquires, and simple Gentlemen.

Chap.

## CHAP. XVII.

### Of the first part of Gentlemen of England, called *Nobilitas Maior.*

Nobilitas maior. Eldest sons of Dukes are not Earles by birth, but Lords, and take their place aboue Earles, and so are Earles Eldest sonnes in respect of Barrons. Esquires of honour, or Lords.

DUkes, Marquises, Earles, Vicounts, and Barons either be created by the Prince, or come to that honor by being the eldest Sonnes, as highest and next in succession to their parents. For the eldest of Dukes sons during his fathers life is called an earle: an Earles sonne is called by the name of a Vicount or Barron, or els according as the creation is. The Creation I call the first donation and condition of the honor (giuen by the Prince for good seruice done by him, and aduancement that the Prince wil bestow vpon him) which with the title of that honour, is commonly (but not alwaies) giuen to him and to his heires, males onely: the rest of the sonnes of the Nobilitie, by the rigour of the lawe be but Esquires, yet in common speech, all Dukes, and Marquises sonnes, and the eldest sonne of an Earle be called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting such onely, as bee thereunto by some speciall office called. The Barrony or degree of Lordes, doth aunswere to the dignitie of the Senators of Rome, and the title of our Nobility to their *patritij*: when *patritij* did betoken *Senatores, aut Senatorum filios*, Census Senatorum was in Rome, at diuers times diuers, and in England no man is created a Barron, except he may dispend of yeerely reuenue one thousand pounds, or one thousand marks at the least; Vicounts, Earles, Marquesses, and Dukes more, according to the proportion of the degree and honour, but though by chaunce hee or his sonne haue lesse, hee keepeth his degree: but if they decay by excesse, and bee not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not ad-

mitted the vpper house in the Parliament, although they keepe the name of Lord still.

## CHAP. XVIII.

Of the second sort of Gentlemen, which may bee called Nobiles minor, and first of Knights.

NO man is a Knight by succession, no not the King or Prince. And the name of Prince in England κατ' ἐξοχὴν betokeneth the eldest sonne of Prince of Wales: although the King himselfe his eldest sonne, & all Dukes be called by generall name Princes. But as in France the Kings eldest son hath the title of Dolphin, and hee or the next heyre apparant to the crowne is Pontife, so in England the Kings eldest sonne is called κατ' ἐξοχὴν the Prince. Knights therefore be not borne but made, either before the battaile to encourage them the more to aduenture their liues, or after the conflict, as aduancements for their hardinesse and manhood already shewed: or out of the warre for some great seruice done, or some good hope through the vertues which doe appeare in them. And they are made either by the King himselfe, or by his commission and royall authoritie giuen for the same purpose, or by his Lieutenant in the warres, who hath his royall and absolute power committed to him for that time. And that order seemeth to answere in part to that which the Romaines called *Equites Romani*, differing in some points, and agreeing in other, as their Common-wealth and ours doe differ & agree. For neuer in all points one common-wealth doth agree with an other, nor long time any one common-wealth with it selfe. For all changeth continually to more or lesse, and still to diuers and diuers orders, as the diuersity of times the present occasion, and the mutability of mens wits doth inuent and bring new. Wales, to reforme and amend that wherein they doe

finde

finde fault. *Equites Romani*, were chosen *ex censu*, that is according to their substance and riches. So be Knights in England most commonly, according to the yeerely reuenue of their lands, beeing able to maintaine that estate: yet all they that had *Equestrem censum*, *non legebantur Equites*. No more are all made Knights in England that may dispend a Knights land or fée, but they onely whome the King will so honour. The number of *Equites* was vncertaine, and so it is of Knights, at the pleasure of the Prince. *Equites Romani* had *equum publicum*. The Knights of England haue not so, but finde their owne horse themselues in peace-time, and most vsually in warres.

*Census Equester* was among the Romanes at diuers times of diuers value: but in England whosoeuer may dispende of his free landes fourty poundes starling of yeerely reuenue, by an olde lawe of England, eyther at the coronation of the King, or mariage of his daughter, or at the dubbing of the Prince Knight, or some such great occasion, may bee by the King compelled to take that order and honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some, who for causes are not thought worthy of that honour & yet haue abilitie, neither be made knights, though they would, and yet pay the fine of xl. li. sterling at that time when this order began, which maketh now Cxx. li. of currant mony of England: as I haue more at large declared in my booke of the diuersity of standards, or the valour of monies.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained *Equites and Plebem*: so when we in England doe say the Lords and the Commons: the Knights, esquires, and other Gentlemen, with

Citizens, Burgeſſes and Peomen, be accounted to make the Commons. In ordaining of lawes, the Senate of Lords of England is in one houſe, where the Archbiſhops and Biſhoppes alſo bee, and the King or Queene for the time being as chiefe, the Knights and all the reſt of the Gentlemen, Citizens and Burgeſſes which bee admitted to conſult vpon the greateſt affairs of the Realm, be in another houſe by themſelues, and that is called the houſe of the Commons, as we ſhall more clearly deſcribe when wee ſpeake of the Parliament. Whereupon this word Knight is deriued, and whether it doe betoken no more but that which *Miles* doth in Latine, which is a Souldier, might bee mooued as a queſtion. The word Souldier now ſeemeth rather to come of ſold and paiment and more to betoken a waged or hired man to fight, than otherwiſe, yet Cæſar in his Commentaries called Soldures in the tongue gallois, men who deuoted and ſwore themſelues in a certaine band or oath one to another, and to the Captaine, which order if the Almaines did follow, it may be, that they who were not hired, but being of the Nation, vpon their owne charges, & for their aduancement, & by ſuch common oath or band that did followe the warres, were (poſſibly) κατ' ἐξοχὴν called Knights or milites, and now among the Almaines ſome are called Lance-knights, or ſouldiers of their band not hyred, although at this day they be for the moſt part hirelings. Or peraduenture it may be that they which were next about the Prince, as his guard and ſeruants, picked or choſen men out of the reſt, being called in the Almaine language Knighten, which is as much to ſay as ſeruants: theſe men being found of good ſeruice, the word afterward was taken for an honor, and for him who maketh profeſſion of Armes. Our language is ſo changed, that I dare make no iudgment thereof. Now we call him Knight in Engliſh, that the French calleth Cheualier, and the Latine *equitem* or

*eque-*

*equeſtris ordinis.*

And when any man is made a Knight, hée knéeling downe, is ſtroken of the Prince, with his ſword naked, vpon the back or ſhoulder, the Prince ſaying, ſus or ſois Cheualier au nom de Dieu, and (in times paſt) they added S. George, and at his ariſing the Prince ſaith auaunce. This is the manner of dubbing of Knightes at this preſent: and that terme dubbing, was the old terme in this point, and not creation. At the coronation of a King or Quéen, there be Knights of the Bath made, with long and more curious ceremonies. Knights bannerets are made in the fielde, with the ceremony of cutting of the poynt of his ſtandart and making it as it were a banner: he being before a batcheler Knight, is now of a higher degrée, allowed to diſplay his Armes in a banner as Barons doe. But this order is almoſt growne out of vſe in England. But howſoeuer one be dubbed or made a Knight, his wife is by and by called a Ladie, as well as a Barons wife: hée himſelfe is not called Lord, but hath to his name in common appellation added this ſillable Sir, as if he before were named Thomas, William, Iohn, or Richard, afterward he is alwaies called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the terme which men giue to Knights in England. This may ſuffice at this time, to declare the order of Knighthood, yet there is another order of Knights in England, which be called the Knights of the Garter. King Edward the third, after he had obtained many notable victories, King Iohn of France, King Iames of Scotland, béeing both priſoners in the tower of London at one time, and King Henrie of Caſtile the baſtard expulſed out of his realme, and Don Pedro reſtored vnto it by the Prince of Wales and Duke of Aquitaine called the black Prince, inuented a ſocietie of honour, and made a choyce out of his owne realme and dominions, and all Chriſtendome: and the

beſt and moſt excellent renowned perſons in vertues and honour, he did adorne with that title to be knights of his order, gaue them a garter decked with gold, pearle, and pretious ſtones, with the buckle of gold, to weare daily on the left leg onely, a kirtle, gowne, cloke, chaperon, coller, and other auguſt and magnificall apparell both of ſtuffe and faſhion exquiſite and heroicall, to weare at high feaſts, as to ſo high and princely an order was méete: of which order he and his ſucceſſors Kings and Quéenes of England to be the ſoueraigne, and the reſt by certaine ſtatutes and lawes among themſelues, be taken as brethren and fellowes in that order, to the number of xxvi. But becauſe this is rather an ornament of the Realme, then any policy or gouernment thereof, I leaue to ſpeake any further of it.

## Chap. XIX.

### Of Eſquires.

Eſcuier or Eſquire (which we call commonly ſquire) is a French word, and betokeneth *Scutigerum* or *Armigerum*, and be all thoſe which beare Armes (as wée call them) or armories (as they terme them in French) which to beare is a teſtimony of the Nobilitie or race from whence they doe come. Theſe be taken for no diſtinct order of the Common-wealth, but do goe with the reſidue of the Gentlemen: ſaue that (as I take it) they bée thoſe who beare Armes, teſtimonies (as I haue ſaid) of their race, and therefore haue neither creation nor dubbing: or elſe they were at the firſt Colterels or the bearers of the Armes of Lords or Knights, and by that had their name for a dignitie and honour giuen to diſtinguiſh them from a common ſouldier called in Latine, *Gregarius miles*.

Chap.

## Chap. XX.

### Of Gentlemen.

Gentlemen be those whom their blood and race doth make noble and knowne, εὐγενεῖς in Greeke, the Latines cal them al *Nobiles*, as the french Nobles. εὐγένεια or *Nobilitas* in Latine is defined, honor or title given, for that the ancestors haue been notable in riches or vertues or (in fewer words) old riches or prowes remaining in one stock. Which if the successors do keepe and follow, they be *vere nobiles*, and εὐγενεῖς, if they doo not, yet the fame and wealth of their ancestors serue to saue them so long as it can, as a thing once gilted though it bee copper within, till the gilt bee worne away. This hath his reason, for the Etymologie of the name serued the efficacy of the worde. *Gens* in Latine betokeneth the race and firname, so the Romanes had Cornelios, Sergios, Appios, Fabios, AEmilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name were also Gentiles, and remaining the memorie of the glory of their progenitors fame, were Gentlemen of that or that race. This matter made a great strife among the Romans, when those which were noui homines, were more allowed for their vertues new and newly shewen, than the old smell of auncient race newly defaced by the euill life of their nephews and discendents could make the other to be. Thus the Ciceriones, Catones, and Marii had much a doe with those auncients, and therefore said Iuuenalis:

*Malo pater tibi sit Thersites, dummodo tu sis*
*AEacidi similis Vulcaniaque arma capessas:*
*Quàm si Thersitis similem producat Achilles.*

But as other Common-wealths were faine to doe, so must all Princes necessarily follow: that is, where ver-

tus, to honor it. And although vertue of auncient race be easier to be obtained, aswell by the example of the progenitors, which encourageth, as also through hability of education and bringing vp, which enableth, and lastly the enraced loue of tenants and neighbors to such Noblemen and Gentlemen, of whom they hold, and by whome they doe dwell, which pricketh forward to ensue in their fathers steps: So if all this do faile (as it were great pittie it should) yet such is the nature of all humane thinges, and so the world is subiect to mutability that it doth many times faile: but when it doth, the Prince and Commonwealth haue the same power that their predecessors had, and as the husbandman hath to plant a new tree where the old faileth, so hath the Prince to honour vertue where he doth finde it, to make gentlemen, Esquires, Knights, Barrons, Earls, Marquises and Dukes, where he seeth vertue able to beare that honor or merits, and deserues it, and so it hath alwaies beene vsed among vs. But ordinarily the King doth only make Knights, and create Barrons, or higher degrees: for as for Gentlemē, they be made good cheap in England. For whosoeuer studieth the laws of the Realm, who studieth in the Vniuersities, who professeth liberall Sciences: and to be short, who can liue idely, and without manuall labour, and will beare the port, charge and countenance of a Gentleman, hee shall bee called master, for that is the title which men giue to Esquires, and other Gentlemen, and shall bee taken for a Gentleman. For true it is with vs as he said, *Tanti eris alijs, quanti tibi fueris.* And (if neede be) a King of Heraulds shall also giue him for money armes newly made and inuented, the title whereof shal pretend to haue beene found by the said Herauld in perusing and viewing of olde Registers, where his auncestors in times past had beene recorded to beare the same. Or if he will doe it more truely, and of better faith, hee will write that for the merits of

that

that man, and certaine qualities, which he doth ſee in him, and for ſundry noble acts which he hath perfourmed: he by the authority which hee hath, as King of Heraulds and Armes giueth to him and his heyres theſe and theſe Armes: which being done, I thinke hee may be called a Squire, for hee beareth euer after thoſe Armes, Such then are called ſometime in ſcorne, Gentlemen of the firſt head.

## CHAP. XXI.

### Whether the manner of England in making Gentlemen ſo eaſily, is to be allowed.

A Man may make doubt and queſtion, whether this maner of making Gentlemen is to bee allowed or no, and for my part I am of that opinion, that it is not amiſſe. For firſt the Prince loſeth nothing by it, as hee ſhould doe if it were in France: for the yeoman or huſbandman is no more ſubiect to taile or tare in England than the Gentleman: no, in euery paiment to the King the Gentleman is more charged, which hee beareth the gladlier, and dareth not gaine ſay, for to ſaue and keepe his honour and reputation. In any ſhew or muſter, or other particular charge of the towne where he is, he muſt open his purſe wider, and augment his portion aboue others, or elſe he doth diminiſh his reputation. As for their outward ſhew a Gentleman (if he will bee ſo accounted) muſt goe like a Gentleman, a Yeoman like a Yeoman, and a Raſcall like a Raſcall: and if hee bee called to the warres, hee muſt and will (whatſoeuer it coſt him) aray himſelfe, and arme him according to the vocation which he pretendeth: he muſt ſhew alſo a more manly courage, and tokens of better education, higher ſtomacke, and bountifuller liberality than others, and keepe about him idle ſeruants, who ſhall doe nothing but wait

vpon him. So that no man hath hurt by it but hee himselfe, who heereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernement of the Common-wealth, it is not those that haue to doe with it, which will magnify themselues, and goe in higher buskins than their estate will beare, but they which are to bee appointed, are persons tried and well knowne, as shall be declared hereafter.

## Chap. XXII.
### Of Citizens and Burgesses.

NExt Gentlemen be appointed Citizens and Burgesses, such as not onely be free, and receaued as officers within the Cities, but also be of some substance to beare the charges. But these Citizens and Burgesses, be to serue the Common-wealth, in their Cities and Burrowes, or in corporate townes where they dwell. Generally in the Shieres they be of none account, saue only in the common assembly of the realme to make lawes which is called the Parliament. The ancient Cities appoint foure, and each Borough two, to haue voyces in it, and to giue their consent or dissent, in the name of the Cities or burrowes for which they be appointed.

## Chap. XXIII.
### Of Yeomen.

THose whome we call yeomen, next vnto the Nobility, Knights and Squires, haue the greatest charge and doings in the Common-wealth, or rather are more trauailed to serue in it then all the rest: as shall appeare hereafter. I call him a yeoman whome our lawes doe call *Legalem hominem*, a word familiar in writs and Enquests, which is a free man borne English, and may dis-

pend

pend of his own frée land in yérely reuenue to the summe of xl.s. sterling. This maketh (if the iuſt valew were taken now to the proportion of monies) vi.li. of our currant money at this préſent. This ſort of people confeſſe themſelues to be no Gentlemen, but giue the honour to all which be or take vpon them to be Gentlemen, and yet they haue a certaine préheminence and more eſtimation then labourers and artificers, and commonly liue wealthily, kéepe good houſes, and doe their buſineſſe and trauaile to acquire riches: theſe be (for the moſt part) farmours vnto Gentlemen, which with grazing, frequenting of markets, and kéeping ſeruants not idly as the Gentleman doth, but ſuch as get both their owne liuing and part of their maiſters, and by theſe meanes doe come to ſuch wealth, that they are able and daily doe buy the lands of vnthriftie Gentlemen, and after ſetting their ſonnes to the ſchoole at the vniuerſities, to the lawes of the Realme, or otherwiſe leauing them ſufficient lands wheron they may liue without labour, doe make their ſaid ſonnes by thoſe meanes Gentlemen: Theſe be not called maiſters, for that (as I ſaid) pertaineth to Gentlemen only. But to their ſurnames men adde Goodman: as if the ſurname be Luter, Finch, White, Browne, they are called goodman Luter, goodman Finch, goodman White, goodman Browne, amongſt their neighbours, I meane not in matters of importance, or in law. But in matters of law and for diſtinction, if one were a Knight, they would write him (for examples ſake) Sir Iohn Finch Knight. ſo if he be an Eſquire Iohn Finch Eſquire or Gentleman, if he be no Gentleman, Iohn Finch yeoman. For amongſt the Gentlemen they which claime no higher degrée, and yet be to be exempted out of the number of the loweſt ſort thereof, bee written Eſquires. So amongſt the Huſbandmen, Labourers, the loweſt and raſcall ſort of the people, ſuch as be exempted out of the number of the raſcability of the po-

pular, be called & written Yeomen, as in the degree next vnto Gentlemen. These are they which old Cato calleth *Aratores*, and *optimos cives in Republica*, & such as of whome the writers of Common-wealths praise to haue many in it. Aristotle namely reciteth μίσθιοι ἀγοραῖοι: these tend their owne businesse, come not to meddle in publike maters and iudgments, but when they are called, and glad when they are deliuered thereof, are obedient to the Gentlemen and rulers, and in warre can abide trauaile and labour, as men vsed to fight for their Lords of whom they hold their lands, for their wiues & children, for their Country and Nation, for praise and honour against they come home, and to haue the loue of their Lord and his children, to be continued towardes them and their children, which haue aduentured their liues for and with him and his. These are they which in the old world gate that honour to England, not that either for wit, conduction, or for power they are or were to be compared to the Gentlemen, but because they be so many in number, so obedient at the Lords call, so strong of body, so hard to endure paine, so courageous to aduenture with their Lords or Captaine, going with, or before them, for else they be not hasty nor neuer were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affraid al Fraunce, that would rather die al, then once abandon the Knight or Gentleman their Captaine, who at those daies commonly was their Lord, & whose tennants they were, ready (besides perpetuall shame) to be in danger of vndoing of themselues, and all theirs, if they should shew any signe of cowardise, or abandon the Lord, Knight or Gentleman of whome they held their liuing. And this they haue amongst them from their forefathers, told one to another. The Gentlemen of Fraunce, and the Yeomen of England, are renoumed, because in battaile of horsemen,

mon, Fraunce was many times to good for vs, as wée a-gaine alway for them on foote. And Gentlemen for the most part be men at armes and horsmen, and Yeomen commonly on foote: howsoeuer it was, yet the Gentlemen had alwaies the conduction of the Yeomen, and as their Captaines were either a foote or vpon a little nagge with them, and the Kings of England in foughten battailes remaining alwaies among the footemen, as the French Kings among their horsemen. Each Prince thereby, as a man may gesse, did shew where hée thought his strength did consist. What a Yeoman is I haue declared, but from whence the word is deriued it is hard to say: it cannot be thought that Yeomen should be laid of a young man, for commonly we doe not call any a yeoman till he be married, and haue children, & as it were, haue some authority among his neighbours. Yonker in low Dutch betokeneth a meane Gentleman, or a gay fellow. Possible our Yeomen not being so bolt as to name themselues Gentlemen, when they came home, were content when they had heard by frequentation with low Dutchmen, of some small Gentleman (but yet that would be counted so) to be called amongst them yonker man, they calling so in warres by mockage or in sport the one another, when they came home, yonker man, and so Yeoman: which word now signifieth among vs, a man well at ease, and hauing honestly to liue, and yet not a Gentleman: whatsoeuer that word yonker man, yong man, or Yeoman doth more or lesse signifie to the Dutchmen.

German in the Saxon is a married man and hereof commeth our Yeoman, for after marriage men are accounted serled members in the Commonwealth, but not before. A yonker commeth of yongheire which is a sonne and heire to a gentleman or a yong gentleman.

## CHAP. XXIII.

### Of the fourth sort of men which doe not rule.

The fourth sort or classe amongst vs, is of those which the old Romans called *capite sensu proletarij* or

*operarii*, day labourers, poore husbandmen, yea Marchants or retainers which haue no free land, copyholders, and all artificers as Tailers, Shoomakers, Carpenters, Brickmakers, Bricklayers, Masons, &c. These haue no voyce nor authority in our Common wealth, and no account is made of them, but only to be ruled, and not to rule other, and yet they be not altogether neglected. For in Cities & corporate townes for default of Yeomen, enquests and Iuries are impaneled of such manner of people. And in Villages they be commonly made Churchwardens. Alecanners, and many times Constables, which office toucheth more the Common-wealth, and at the first was not imployed vpon such low and base persons. Wherfore generally to speake of the Common-wealth, or policy of England, it is gouerned, administred, and mannaged by three sorts of persons, the Prince, Monarch, and head Gouernour, which is called the King, or if the crowne fall to a woman, the Queene absolute, as I haue heretofore said: In whose name and by whose authoritie all things are administred. The Gentlemen, which be deuided into two parts, the Barony or estate of Lords containing Barons and all that be aboue the degree of a Baron, (as I haue declared before:) and those which be no Lords, as Knights, Esquires, and simply Gentlemen.

The third and last sort of persons, is named the Yeomanry: Each of these hath his part and administration in iudgments, corrections of defaults, in election of offices, in appointing and collection of tributes and subsidies or in making lawes, as shall appeare hereafter.

THE

# THE SECOND BOOKE.

## CHAP. I.

The diuision and definition of the Lawes of this Realme in generall.

The lawes of England consist in two points. { Iudgement and Practise.

In Iudgement are considered the { Persons. Place. Matter, and Manner.

The Persons in iudgement are the { Iudges in the Courtes. Seargeants and counsellers.

In practise are considered the { Persons, and their Office.

The persons are { Protonotaries. Sollicitors, and Atturneis.

Their office is to prepare the matter, and to make it readie for the Iudges to determine.

The Protonotaries are the Clerkes in the Court, which doe record the matters hanging in iudgement, and

doe frame the pleading, enter the rules and orders of the Court, the verdites and iudgements giuen in the same.

Solicitors are such, as beeing learned in the Lawes, and informed of their masters cause, doe informe and instruct the Counsellors in the same.

Atturneis are such as by experience haue learned and do know the orders and manner of procéding in euerie court where they serue, and doe purchase out writs and processe belonging to their Clients cause. They sée to his suites, that he be not hindred by negligence. They pay the fees belonging to the Courts, and prepare the cause for iudgement.

The places for iudgement are the courts where sentence is giuen, and the lawes made: as, the Parlement, Chauncerie, Kings-bench, the Common-pleas, the Exchequer, the Court of Wards, the Star-chamber, the Court of Requests, and the Duchie Court of Lancaster.

The matter of the law is { Iustice, and Equitie.

The manner of their seuerall procédings, followeth.

## Chap. II.

### Of the Parlement, and the authority thereof.

The most high and absolute power of the Realme of England consisteth in the parlement. For as in war where the King himselfe in person, the Nobility, the rest of the gentilitie, & the yeomanrie are, is the force and power of England: So in peace and consultation where the prince is to giue life, and the last and highest commandement: the Barronie or Nobilitie for the higher: the Knights Esquires, gentlemen & commons for the lower part of the Common-wealth: the bishops for the clergie

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be preſent to aduertiſe, conſult and ſhew what is good & neceſſarie for the Common-wealth, and to conſult together; and vpon mature deliberation euery bill or law beeing thrice read & diſputed vpon in either houſe, the other two parts, firſt each a part, and after the Prince himſelfe in preſence of both the parties, doth conſent vnto and alloweth. That is the princes and whole Realms deede: whereupon iuſtly no man can complaine, but muſt accommodate himſelfe to finde it good and obey it.

That which is done by this conſent is called firme, ſtable and *ſanctum*, and is taken for lawe. The Parlement abrogateth old lawes, maketh newe, giueth order for things paſt, and for things hereafter to be followed, chan eth right and poſſeſſions of priuate men, legitimateth baſtards, eſtabliſheth formes of religion, alstereth waights and meaſures, giueth forme of ſucceſſion to the Crowne, defineth of doubtfull rights, whereof is no law already made, appointeth ſubſidies, tailes, tares, & impoſitions, giueth moſt free pardons and abſolutions, reſtoreth in blood and name, as the higheſt court condemneth or abſolueth them whome the Prince will put to that triall. And to bee ſhort, all that euer the people of Rome might do, either in *Centuriatis comitiis*, or *tributis*, the ſame may bee done by the Parlement of England, which repreſenteth, and hath the power of the whole Realme, both the head and the bodie. For euery Engliſhman is intended to be there preſent, either in perſon, or by procuration and atturny, of what preheminence, ſtate, dignitie or qualitie ſoeuer he be, from the Prince, (be he King or Queene) to the loweſt perſon of England. And the conſent of the Parlement, is taken to be euery mans conſent. Alias tribunitiis.

The Iudges in Parliament are the King or Queens Maieſty, the Lordes temporall and ſpirituall, the Commons repreſented by the Knights & Burgeſſes of euerie

shiere and Borough Townes. These all, or the greater part of them and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The offices in Parlement are the Speakers, two Clarkes, the one for the higher house, the other for the lower, and Committies.

The speaker is hee that doth commend and preferre the bils exhibited into the Parliament, and is the mouth of the parliament. Hee is commonly appointed by the King or Queene, though accepted by the assent of the house.

The Clarkes are the keepers of the parlement rolles and records, and of the statutes made, and haue the custody of the priuate statutes not printed.

The Committies are such as eyther the Lords in the higher house, or burgesses in the lower house, doe choose to frame the Lawes vpon such bils as are agreede vpon, and afterwarde to be ratified by the same houses.

## Chap. III.

### The forme of holding the Parliament.

The Prince sendeth forth his rescripts or writs to euery Duke, Marquesse, Baron, and euery other Lord temporall or spirituall who hath voyce in the Parliament, to be at his great counsell of Parliament such a day (the space from the date of the writte is commonly at the least 40. daies) he sendeth also writs to the Sheriffes of euery shire, to admonish the whole shire to chose two knights of the Parliament in the name of the shire, to heare and reason, and to giue their aduise and consent in the name of the shire. and to be present at that day: likewise to euery Citty and towne, which of auncient tyme hath bene wont to find Burgesses of the Parliament, to to make election, that they might be present there at the

first

firſt day of the Parliament. The Knights of the ſhire be choſen by all the Gentlemen and Yeomen of the ſhire, preſent at the day aſſigned for the election: the voyce of any abſent can be counted for none. Yeomen I call here (as before) that may diſpend at the leaſt xl. s. of yeerely rent of free land of his owne. Theſe meeting at one day, the two who haue the more of their voices, be choſen Knights of the ſhire for that Parliament: likewiſe by the plurality of the voices of the Citizens and Burgeſſes, be the Burgeſſes elected. The firſt day of the Parliament, the Prince and al the Lords in their robes of Parliament doe meete in the higher houſe, where after prayers made, they that be preſent are written, and they that be abſent vpon ſickneſſe, or ſome other reaſonable cauſe (which the Prince will allow) doe conſtitute vnder their hand and ſeale, ſome one of thoſe who be preſent, as their procurer or Atturny, to giue voice for them: ſo that by preſence or Atturny and proxy they be all there, all the Princes and Barons, and all Archbiſhops and Biſhops, and (when Abbots were) ſo many Abbots as had voice in Parliament. The place where the aſſembly is, is richly tapeſſed and hanged, a Princely and royall throne as appertaineth to a King, ſet in the middeſt of the higher place thereof. Next vnder the Prince ſitteth the Chancellor, who is the voyce and Orator of the Prince. On the one ſide of that houſe or chamber, ſitteth the Archbiſhops and Biſhops, each in his ranke, on the other ſide the Dukes and Barons.

In the middeſt thereof vpon woolſackes ſitteth the Iudges of the Realme, the Maiſter of the Roules, and the Secretaries of eſtate. But theſe that ſit on the woolſacks haue no voyce in the houſe, but onely ſit there to anſwere their knowledge in the law, when they be asked, if anie doubt ariſe among the Lords: The Secretaries doe anſwere of ſuch letters or things paſſed in counſell, whereof

they haue the custodie and knowledge: and this is called the vpper house, whose consent and dissent is giuen by each man seuerally, and by himselfe, first for himselfe, and then seuerally for so many as he hath letters and proxies, when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane time the Knights of the shieres, and Burgesses of the Parliament (for so they are called that haue voice in Parliament, and are chosen as I haue said before to the number betwixt three and foure hundred) are called by such as it pleaseth the Prince to appoint, into an other great house or chamber by name, to which they aunswere: and declaring for what shiere or towne they aunswere, then they are willed to choose an able and discreete man, to bee as it were the mouth of them all, and to speak for, and in the name of them, and to present him so chosen by them to the Prince: which done they comming all with him to a Bar, which is at the nether ende of the vpper house, there he first prayseth the Prince, then maketh his excuse of inability, and prayeth the prince that hee would command the commons to choose another. The Chauncellour in the Princes name doth so much declare him able, as he did declare himselfe vnable, and thanketh the Commons for chosing so wise, discreete, and eloquent a man, and willeth them to goe and consult of lawes for the Common-wealth. Then the speaker maketh certaine requests to the Prince in the name of the Commons, first, that his Maiesty would be content that they may vse and enioy al their liberties and priuiledges that the Common house was wont to enioy.

Secondly, that they may frankly and freely say their mindes, in disputing of such matters as may come in question, and that without offence to his Maiestie.

Thirdly, if any should chance of that lower house to offend, or not to doe or say as should bee come him, or if a-

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nie ſhould offend any of them being called to that his highneſſe Court, that they themſelues might (according to the auntient cuſtome) haue the puniſhment of them. And fourthly, that if there come any doubt, whereupon they ſhall deſire to haue the aduiſe or conference with his Maieſtie, or with any of the Lords, they might doe it: all which he promiſeth in the Commons names, that they ſhall not abuſe, but haue ſuch regard as moſt faithfull, true, and louing Subiects ought to haue to their Prince.

The Chancellor anſwereth in the Princes name, as appertaineth. And this is all that is done for one day, and ſometime for two. Beſides the Chancellour, there is one in the vpper houſe, who is called Clark of the Parliament, who readeth the bills. For all that commeth in conſultation either in the vpper houſe or in the neather houſe, is put in writing firſt in paper, which being once read, he that will riſeth vp and ſpeaketh with it or againſt it: and ſo one after another ſo long as they ſhal thinke good. That done, they goe to another, and ſo another bill. After it hath bene once or twiſe read, and doth appeare that it is ſomewhat liked as reaſonable, with ſuch amendment in words, and peraduenture ſome ſentences, as by diſputation ſéemeth to be amended: in the vpper houſe the Chancellor asketh if they will haue it ingroſſed, that is to ſay, put into parchment: which done, and read the third time, and that eft-ſones, if any be diſpoſed to obiect, diſputed againe among them, the Chancellor asketh if they will goe to the queſtion: and if they agrée to goe to the queſtion, them he ſaith, here is ſuch a lawe or act concerning ſuch a matter, which hath beene thriſe read héere in this houſe, are ye content that it be enacted or no? If the not contents be moe, then the bill is dashed, that is to ſay, the law is annihilated, and goeth no farther. If the contents be the moe, then the Clarke writeth vnderneath: Soit

baille aux commons. And so when they see time, they send such bills as they haue approued, by two or three of those which doe sit on the woolsaks to the Commons: who asking licence and comming into the house, with due reuerence, saith to the speaker: Maister speaker, my Lords of the vpper house haue passed among them and think good, that there should be enacted by Parliament such an act, and such an act, and so readeth the titles of that act or acts. They pray you to consider of them, and shew them your aduise, which done they goe their way. They being gone, and the doore againe shut, the speaker reherseth to the house what they said. And if they be not busie disputing at that time another bill, he asketh them straigot-way if they will haue that bill, or (if there bee moe) one of them.

In like manner in the lower house the speaker sitting in a seat or chaire for that purpose somewhat higher, that he may see and be seene of them all, hath before him, in a lower seate his Clarke, who readeth such bills as be first propounded in the lower house, or be sent downe from the Lords. For in that poynt each house hath equall authority, to propound what they think meete, either for the abrogating of some law made before, or for making of a new. All Bills be thrise in three diuers dayes read and disputed vpon, before they come to the question. In the disputing is a marueious good order vsed in the lower house. He that standeth vppe bare-headed is vnderstanded that he will speake to the bill. If moe stand vp, who that is first iudged to arise, is first heard, though the one doe praise the law, the other dislwade it, yet there is no altercation. For euery man speaketh as to the speaker, not as one to another, for that is against the order of the house. It is also taken against the order, to name him whome ye doe confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill,

and

and gaue this and this reason. And so with perpetuall Oration not with altercation, he goeth through till hee haue made an end. He that once hath spoken in a bill, though he be confuted straight, that day may not reply, no though he would change his opinion. So that to one bill in one day one may not in that house speake twise, for else one or two with altercation would spend all the time. The next day he may, but then also but once.

No reuiling or nipping words must be vsed. For then all the house will cry, it is against the order: and if any speake vnreuerently or seditiously against the Prince or the priuie Counsel, I haue séene them not onely interrupted, but it hath béene mooued after to the house, and they haue sent them to the tower. So that in such a multitude and in such diuersity of mindes, and opinions, there is the greatest modesty and temperance of speech that can be vsed. Neuerthelesse, with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for vrgent causes, and hasting of time. At the afternoone they kéepe no Parliament. The speaker hath no voyce in the house, nor they will not suffer him to speake in any bill to mooue or disswade it. But when any bill is read, the speakers office is, as briefly aud as plainely as he may, to declare the effect thereof to the house. If the Commons doe assent to such bills as be sent to them first agréed vpon from the Lords thus subscribed, Les communs ont assentus, so if the Lords doe agrée to such bills as be first agréede vpon by the Commons, they send them downe to the speaker thus subscribed, Les Seigneurs ont assentus, If they cannot agrée, the two houses (for every bill from whence so euer it doth come, is thrise read in each of the houses) if it be vnderstoode that there is any sticking, sometimes the Lords to the Commons, sometime the Commons to the Lordes, doe require that a certaine of each house may

meete together, and so each part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part, not alwaies, eyther part agrees to others bills.

In the vpper house they giue their assent and dissent each man seuerally and by himselfe, first, for himselfe, and then for so many as he hath proxie. When the Chancellour hath demanded of them, whether they will goe to the question after the bill hath been thrice read, they saying only content or not content, without further reasoning or replying: and as the more number doth agree, so it is agreed on, or dashed.

In the nether house none of them that is elected, either Knight or Burges can giue his voice to another, nor his consent or dissent by proxie. The more part of them that be present only maketh the consent or dissent. After the bill hath beene twise reade, and then engrossed, and eft-soones read and disputed on enough as is thought, the speaker aske th if they will goe to the question: And if they agree, he holdeth the bill vp in his hand and saith: As many as will haue this bill goe forward, which is concerning such a matter, say yea, Then they which allow the bil crie yea, and as many as will not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it bee a doubt which cry is bigger, they deuide the house, the speaker saying, as many as doe allow the bill goe downe with the bil, and as many as doe not, sit still. So they deuide themselues, and being so deuided they are numbred who made the more part, and so the bill doth speed. It chaunceth sometime that some part of the bill is allowed, some other part hath much controuersie and doubt made of it: and it is thought if it were amended it would goe forward. Then they chuse certaine Committees of them who haue spoken with the bill and against it, to amend it, & bring it againe so amended, as they amongst them shall thinke meete: and

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this is before it is engrossed, yea and sometime after. But the agreement of these Committes is no preiudice to the house. For at the last question they will either accept it or dash it, as it shal seeme good, notwithstanding that whatsoeuer the Committes haue done.

Thus no bill is an act of Parlament, ordinance, or edict of law, vntill both the houses seuerally haue agreed vnto it after the order aforesaid, no nor then neither. But the last day of that Parlament or session the Prince commethin person in his Parlament robes and sitteth in his state: all the vpper house sitteth about the Prince in their states and order in their robes. The speaker with all the common house commeth to the Barre, and there after thanksgiuing first in the Lords name by the Chancelour, &c. And in the commons name by the speaker to the Prince, for that he hath so great care of the good gouernement of his people, and for calling them together to aduise of such things as should be for the reformation, establishing, and ornament of the common wealth: the Chancelour in the princes name giueth thanks to the Lords and commons for their paines and trauailes taken, which he saith the Prince will remember and recompence when time and occasion shall serue, and that he for his part is ready to declare his pleasure concerning their procedings, whereby the same may haue perfect life and accomplishment by his princely authority, & so haue the whole consent of the Realme. Then one reades the titles of euery act which hath passed at that Session, but onely in this fashion: An act concerning such a thing, &c. It is marked there what the Prince doth allow, and to such hee saith: Le Roy, or la Royne le veult. And those be taken now as perfect lawes and ordinances of the Realme of England and none other, and as shortly as may be put in print, except it be some priuate cause or law made for the benefit or preiudice of some priuate

man, which the Romaines were wont to call *priuilegia*. These be onely exemplified vnder the seale of the parliament, and for the most part not printed. To those which the Prince liketh not, hee aunswereth, Le Roy, or la Rayne saduisera, and those bee accounted vtterly dashed and of none effect.

This is the order and forme of the highest and most authenticall Court of England, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted auaileable to make any new forfaiture of life, member, or landes of any English man, where there was no lawe ordained for it before. Now let vs speake of the sayd parts when they be seuerall.

## Chap. IIII.

### Of the Monarch, King, or Queene of England.

THe Prince whome I now cal (as I haue often before) the Monarch of England, King, or Queen, hath absolutely in his power the authority of warre and peace, to defie what Prince it shal please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure, or the aduise onely of his priuie Counsell. His priuie Counsell are chosen all at the Princes pleasure out of the Nobility or Barony, and of the Knights, and Esquires such and so many as he shall thinke good, who doe consult dayly, or when neede is, of the waighty matters of the realme to giue therein to their Prince their best aduise they can. The prince doth participate to them all, or so many of them as hee shall thinke good, such legations and messages as come from forraigne Princes, such letters or occurrents as be sent to himselfe or to his Secretaries, and keepeth so many ambassages and letters sent vnto him secret as hee will, although these haue a particular oath of a Counsellour touching faith

faith and secrets administred vnto them when they be first admitted into that company. So that heerein the Kingdome of England is farre more absolute then either the Dukedome of Venice is, or the Kingdome of the Lacedemonians was. In warre time, and in the field the Prince hath also a absolute power, so that his word is a law, hee may put to death, or to other bodily punishment, whome hee shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath béene sometime vsed within the Realme before any open warre, in suddaine insurrections and rebellions, but that not alowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessity, especially when by awie meanes the punishment might haue béene done by order of lawe. This absolute power is called martiall law, and euer was, and necessarily must be vsed in all camps and Hosts of men, where the time nor place doe suffer the tarriance of pleading and processe be it neuer so short, and the important necessitie requireth speedie execution, that with more awe the Souldier might be kept in more straight obedience, without which neuer Captaine can doe any thing vaileable in the warres.

The Prince vseth also absolute power in crying and decréeing the money of the Realme by his proclamation onely. The money is alwaies stamped with the Princes image and title. The forme, fashion, manner, weight, finnesse & basenesse thereof, is at the discretion of the Prince. For whom should the people trust more in that matter than their Prince, seeing the coyne is onlie to certifie the goodnesse of the mettall and the waight, which is affirmed by the Princes image and marke? But if the Prince will deceiue them, & giue them copper for siluer or golde, or enhance his coyne more than it is worth, he is deceiued by his subiects. For in the same sort they pay the Prince

his rents and customes. And in time they will make him pay ratibly or more for meat, drinke, and victuals for him and his, and for their labour, which experience doth teach vs now in our daies to bee done in all regions. For there euer hath beene and euer will bee a certaine proportion betweene the scarcitie and plenty of other things, with gold and siluer. For all other measures and waights, as well of dry things as of wet, they haue accustomed to be established or altered by the Parliament, and not the princes proclamation onely.

The Prince vseth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paines for transgressing of lawes, where the paine of the Lawe is applied onely to the Prince. But where the forfaite (as in popular actions it chaunceth many times) is part to the Prince, the other part to the declarator, detector or informer, there the Prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that manner is called with vs at the princes suite) the Prince giueth absolution or pardon, yet with a clause, *modo stet rectus in curia*, that is to say, that no man obiect against the offendor. Whereby notwithstanding that he hath the Princes pardon if the person offended will take vpon him the accusation (which in our language is called the appeale) in cases where it lieth, the Princes pardon doth not serue the offender.

The Prince giueth all the chiefe and highest offices or magistracies of the Realme, be it of iudgment or dignitie, temporall or spirituall, and hath the tenthes and first fruites of all Ecclesiasticall promotions, except in the Vniuersities, and certaine Colledges, which bee exempt.

All writtes, executions and commaundements, bee done in the Princes name. We doe say in England, the life and member of the Kings subiect are the Kings only, that is to say, no man hath haute nor moyenne iustice but

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the King, nor can hold plea thereof. And therefore all those pleas which touch the life or the mutilation of man be called pleas of the crowne, nor can bee done in the name of any inferior person than he or shee that holdeth the crowne of England. And likewise no man can giue pardon thereof but the Prince onely: although in times past there were certaine County Palatines, as Chester, Durham, and Elie, which were haute Justicers, and writtes went in their Name, and also some Lord Marches of Wales, which claimed like priuiledge: all these are now worne away. The supreme iustice is done in the Kings name, and by his authority onely.

The Prince hath the wardship and first mariage of all those that hold land of him in chiefe. And also the gouernment of all fooles naturall, or such as be made by aduenture of sicknesse, and so continue, if they bee landed. This being once grounded by act of Parlement (although some inconuenience hath beene thought to grow thereof, since that time it hath beene thought very vnreasonable) yet once annexed to the Crowne, who ought to goe about to take the club out of Hercules hand? And beeing gouerned iustly and rightly, I see not so much inconuenience in it, as some men would make of it: diuers other rights and preheminences the Prince hath, which be called prerogatiues, royals, or the prerogatiue of the King, which be declared particularly in the bookes of the common lawes of England.

To bee short, the Prince is the life, the head, and the authoritie of all things that bee done in the Realme of England. And to no Prince is done more honour and reuerence, then to the King and Queene of England: no man speaketh to the Prince, nor serueth at the table, but in adoration and kneeling, all persons of the Realme bee bare headed before him: in so much that in the chamber of presence where the cloath of estate is set, no man dare

walk, yea though the Prince bee not there, no man dare tarry there but bare-headed. This is vnderstood of the subiects of the Realme, for al strangers bee suffered there and in all places to vse the manner of their country, such is the ciuilitie of our Nation.

## Chap. V.

### The Chiefe points wherein one Common-wealth doth differ from another.

NOw that we haue spoken of the Parlement (which is the whole, vniuersall, and generall consent and authoritie aswel of the Prince, as of the Nobility & Commons, that is to say, of the whole head and bodie of the Realme of England) and also of the Prince, (which is the head, life and gouernour of this Common-wealth) there remaineth to shewe, how this head doth distribute his authority and power to the rest of the members for the gouernment of his Realme, and Common wealth of the politicke bodie of England. And whereas all Common-wealths and gouernments be most occupied, and bee most diuers in the fashion of fiue things: In making of lawes and ordinances, for their owne gouernement: in making of battel and peace, or truce with forraine nations: in prouiding of mony for the maintenance of themselues, and defence of themselues against their enemies, in chosing and election of the chiefe officers and magistrates: and fiftly, in the administration of iustice. The first and third wee haue shewed is done by the Prince in Parlement. The second and fourth, by the Prince himselfe: the fifth remaineth to be declared.

Chap.

## Chap. VI.

Of three manners and formes of tryals or iudgments in England.

By order and vsage of England, there be three waies and manners whereby absolute and definite iudgment is giuen, by Parliament, which is the highest and most absolute, by battle, and by the great assise.

## Chap. VII.

Tryall or iudgment by Parliament.

The manner of giuing iudgment by Parliament betweene priuate & priuate men, or betweene the Prince and any priuate man, be it in matters criminal or ciuil, for land or for heritage, doth not differ from the order which I haue prescribed, but it proceedeth by bill thrise read in each house, and assented to as I haue said before, and at the last day confirmed and allowed by the Prince. howbeit such bils be seldome receiued, because that great counsell being inough occupied with the publique affaires of the realme, wil not gladly intermeddle it selfe with priuate quarrels and questions.

## Chap. VIII.

The trial of iudgment by battle.

This is at this time not much vsed, partly because of long time the Pope and the Clergie, to whome in time past we were much subiect, alwaies cried against it as a thing damnable and vnlawfull: and partly because in all Common-wealthes, as to the tongue, so to the manners, fashions, habits, yea and kinds of trials and iudgments, and to all other things that is therein vsed, time

and ſpace of yeares bringeth a change. But I could not yet learne that it was euer abrogated. So that it remaineth in force, whenſoeuer it be demaunded. The manner of it is deſcribed in Briton.

## Chap. IX.

The triall by Aſſiſe or twelue men, and firſt of the three parts which be neceſſary in iudgement.

The two firſt iudgements be abſolute, ſupreame and without appeale, and ſo is alſo the iudgement by the great Aſſiſe. And the cauſe or maner of iudgements in England is in many things different from the faſhion vſed either in France or in Italy, or in any other place. If the Emperors lawes and conſtitutions (called the ciuil lawes) be put in vſe, it will be neceſſary here to make a little digreſſion, to the intent, that that which ſhall bee ſaid hereafter, may be better vnderſtode. All purſuites and actions (we call them in our Engliſh tongue pleas) and in barbarous (but now vſuall Latine) placita, taking that name, abuſiue of the definitiue ſentence, which may wel be called placitum, or δόγμα. The French vſed the ſame, called in their language, the ſentence of their iudges areſte, or areſt, in which wordes notwithſtanding after their cuſtome they doe not ſound the ſ. But wee call placitum, the action, not the ſentence, and placitare barbarouſly, for to pleade in Engliſh, agere, or litigare. Now in all iudgements being two parties, the firſt we cal the impleader, ſuiter, demaunder, or demandant, and plaintife. In criminall cauſes, if hee profeſſe to be an accuſer, we call him appellant, or appelour, and ſo, accuſation we call appeale. The other we call the defendant, and in criminall cauſes, priſoner, for he cannot anſwere, in cauſes criminall, before he doe render himſelfe, or be rendered priſoner.

Iudex

Iudex, is of vs called Iudge, but our fashion is so diuers, that they which giue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie are not called Iudges, but the twelue men. And the same order aswell in ciuil matters and pecuniarie, as in matters criminall.

## Chap. X.

### Of Pleas or Actions.

Pleas or actions criminall, be in English called pleas of the Crowne, which be all those which tend to take away a mans life or any member of him, for his euill deseruing against the Prince and Common wealth.

And this name is giuen not without a cause. For taking this for a principle, that the life and member of an Englishman is in the power onely of the Prince and his lawes, when any of his subiects is spoyled either of life or member, the Prince is endamaged thereby, and hath good cause to aske account how his subiects should come to that mischiefe. And againe, for so much as the Prince who gouerneth the Scepter, and holdeth the Crowne of England, hath this in his care and chardge, to see the Realme well gouerned, the life, members, and possessions of his subiects kept in peace and assurance: hee that by violence shall attempt to breake that peace and assurance, hath forfaited against the Scepter and Crowne of England: and therefore not without a cause in all inquisitions and inditements, if any be found by the twelue men to haue offended in that behalfe, straight the Prince is said to be partie, and he that shall speake for the prisoner shall be rebuked, as speaking against the Prince. Neuertheless, it is neuer forbidden, but the prisoner, a partie defendant, in any cause may alleadge for him all the reasons, meanes, and defences that he can, and shall bee

Sauing in appeales, & vpon a speciall plea, Actio, is the parties whole suit: Breue is the Kings precept.

peaceably heard & quietly. But in those pleas and pursuites of the Crowne, Procuror or Aduocate he gets none, which in ciuill and pecuniary matters (be it for land, rent, right, or possession, although hée pleade against the Prince himselfe) he is neuer denied.

Pleas ciuill be either personall or reall: personall, as contracts or for iniuries: real, be either possessorie, to aske, or to keepe the possession: or in rem, which wee call a writ of right. For that which in the ciuill law is called actio or formula, wee call writte in English, so the Grecians called it worde for worde γραφὴ and in our barbarous Latine we name it *breue*.

And as the olde Romans had their actions some *ex iure ciuili* and some *ex iure prætorio*, and ordinarily *prætor dabat actiones & formulas actionum*: so in England wee retaine still this, and haue some writtes out of the Chancerie, other out of the common pleas or the Kings bench.

## Chap. XI.

### Of the chiefe Tribunalls, Benches, or Courtes of England.

In times past (as may appeare to him that shall with iudgement read the Historyes and antiquities of England) the Courts and Benches followed the King and his Court whersoeuer he went, especially shortly after the conquest. Which thing being found very cumbersome, painfull, and chargeable to the people, it was agreed by Parliament, that there should be a standing place where iudgment should be giuen. And it hath long time bene vsed in Westminster hall, which King William Rufus builded for the Hall of his owne house. In that Hall be ordinarily seene three Tribunals, or Iudges seates. At the entry on the right hand the common pleas where ciuill matters are to be pleaded, specially such as touch lands or con-

or contracts. At the vpper end of the Hall on the right hand, the Kings Bench, where pleas of the Crowne haue their place. And on the left hand ſitteth the Chancellor accompanied with the Maſter of the Rolls, who in Latine may bee called *cuſtos archiuorum Regis*, and certaine men learned in the Ciuill Law, called Maſters of the Chancerie, in Latine they may bee called *Aſſeſſores*.

## Chap XII.

Of the times of pleading called Termes: and of the Chancelour and Chancerie.

TWo things may bee moued in queſtion heere, how all England (being ſo long and ſo large, and hauing ſo many ſhires and prouinces therein) can bee anſwered of iuſtice in one place, and in three benches, be they neuer ſo great: Another (whereas the Kings bench is exerciſed in criminall cauſes, and in all pleas of the crowne, and the common place in all ciuill cauſes, (real and perſonall) what place then hath the Chancerie?

The firſt queſtion will ſeeme more meruailous, and haue more occaſion of doubt, when I ſhall alſo tell that the Law is not open at all times, no, not the third part of the yeare. But where all other Cities and Common-wealths had all the yeare pleas, ſuites, and iudgemenst, except for certaine holy-dayes and harueſt, and vintage, or when for ſome vrgent cauſe the Law was commanded to be ſtopped, which is called *Iuſtitium*: contrarie in ours it is but few times open. That is onely foure times in the yeare, which they call Termes: After Michaelmas about tenne dayes, during fiue or ſixe weekes at the leaſt. After Chriſtmas about a moneth enduring by the ſpace of three weeks. Then from xvii.

daies after Easter by the space of three weekes and odde dayes. Likewise from the first or seuenth day after Trinitie Sunday, during two weekes and odde dayes. All the rest of the yeare there is no pleading, entring, nor pursuing of actions. This small time, and all that but in one place, may seeme very iniurious to the people, who must be faine to suffer much wrong for lacke of Iustice, and of place and time to pleade: but vnto that hereafter I intend to answere more fully, and in the meane while that shall suffice which the wise Cato answered to one who moued, that the pleading place in Rome might bee couered ouer with canuasse, as their Theaters were, to the intent that the Plaintiffes and defendants that were there might pleade their matters more at ease, and not bee in so much danger of their health by the heat of the Sun striking full and open vpon their heads, which was no small griefe and disease specially at Rome. Nay (saith Cato) for my part I had rather with that all the waies to the place of pleading were cast ouer with Galthrops, that the feete of such as loue so well pleading, should feele so much paine of those pricks in going thither, as their heads doe of the Sunne in tarrying there: he meant that they were but idle, hot heads, busie-bodies, and troublesome men in the Common-wealth that did so nourish pleading: good labourers and quiet men could bee content to end their matters at home by iudgement of their neighbours and kinsfolke, without spending so their money vpon Procurers and Aduocates whome we call Atturnies, Counsellors, Sergeants, and generally men of Law. Those he accounted profitable Citizens who attend their honest labour and busines at home, and stand not waiting and gaping vpon their Roles and Profession in the Law: as for the other, by his iudgement, it was no matter what mischiefe they suffered. To the other question of the Chancerie,

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this I answere: That our law which is called of vs the common law, as yée would say *Ius ciuile*, is, and standeth vpon *æquitas*, that is *Ius summum*: and their maximes be taken so streightly, that they may not depart from the tenour of the words, euen as the old ciuill Law was. And therefore as that lacked the helpe of a Prætor (which might *moderari illud ius summum*, giue actions where none was, mittigate the exactnesse and rigour of the law written, giue exceptions as *metus*, *doli mali*, *minoris ætatis*, &c. for remedies, and maintaine alwayes *æquum bonum*:) the same order and rancke holdeth our Chancerie, and the Chancellor hath the very authoritie herein as had the Prætor in the old ciuill Law before the time of the Emperours. So hee that putteth vp his bill in the Chancerie, after that hee hath declared the mischiefe wherein he is, hath relefe as in the solemne *Forum*. And for as much as in this case hee is without remedie in the common Law, therefore he requireth the Chancellor according to equitie & reason to prouide for him and to take such order as to good conscience shal appertaine. And the Court of the Chauncerie is called of the common people the Court of Conscience, because that the Chancellor is not strained by rigor or forme of words of Law to iudge, but *ex æquo* and *bono* and according to conscience as I haue said. And in this Court the vsuall and proper forme of pleading of England is not vsed, but the forme of pleading by writing, which is vsed in other Countries according to the ciuil Law: and the triall is not by twelue men, but by the examination of witnesse as in other Courts of the ciuill Law.

Out of this Court, as from the person of the Prince come all manner of originall Writs. The declaration of writs is at large set downe in the register of writs and in the *Natura brevium*. Out of this Court come most cõmonly Cõmissions, Patents, Licences, Inquisitions, &c.

The Iudges of this Court are the Lord Chancelour of England, assistants, the Maister of the Rolles, and sir Maisters of the Chancerie, which are commonly Doctors of the Ciuill Law.

Officers are the sire Clarkes of the Chancerie, the Clarke of the Crowne generall, the Register, Controler of the Seale, two examiners, the Clarke of the Hamper, the three Clarkes of the Petty bag, the Curssiters, the Sergeant of the Mace.

The Lord Chancellor is the keper of the great Seale, and hath it carried with him whersoeuer hee goeth.

The Maister of the Rolls is the keper of the Records, Iudgments, and sentences giuen in the Court of Chancerie.

The sire Maisters are assistants to the Court, to shew what is the equitie of the ciuill Law, and what is Consctence.

The Clarke of the Crowne is the chiefe Guardian of all the matters of the Crowne: what are Crowne matters, and pleas of the Crowne, sée in the learned booke of Stanford called the Pleas of the Crowne.

The sire Clarkes are the atturnies, as well for the Plaintiffe, as Defendant, in euerie suite in the Court.

The Register is the engrosser and keper of the decrees, publications, orders, and iniunctions issuing out of this Court.

The two examiners are such as take the examination of the witnesses brought to proue or reproue any thing in suite in this Court, and to put their depositions and answers made to their interrogatories in writing.

The Controler of the Seale is to sée and allow of all the Writs made in this Court.

The Clarke of the Hamper is hee that doth receiue the fines due for euerie Writ sealed in this Court.

The

The three Clarkes of the Pettie bag, are they that receiue the Offices that are found in the Court of wards

The Cursiters are Clarkes appointed to their seuerall shires which doe write originall writs that belong to this court or the common place.

The Sergeant carrieth the Mace before the Lord chancelor, and is to call any man before him at his commandement.

The Processe in the chancerie is a *Sub pœna*, which is but to call the party before him vpon a paine, as vpon paine of rl li &c. And this is the way vsed to bring in the party, or else by the Sergeant as before.

The punishment is, if the partie will not come in, or comming in, will not obey the order of the Court, imprisonment during the pleasure of the Lord chancelor.

The order of proceeding is by Iniunctions, Decrees, and orders which are to binde the partie, and if he resist, his punishment is imprisonment.

The matter in this court are all causes wherein equitie and extremitie of Law doe striue, and where the rigour of Lawes haue no remedie, conscience and the moderation of *Summum ius* hath sufficient.

And here is to be noted, that conscience is so regarded in this court, that the Lawes are not neglected, but they must both ioyne and meete in a third, that is a moderation of extremitie.

This court is called of some *Officina Iuris Ciuilis Anglorum*, because out of this court issue all matter of Processe which giue the partie his cause of action in other courts.

## Chap. XIII.

Of Iudges in the Common Law of England, and the manner of tryall and pleading there.

THe Prince out of the numbers of those who haue bin Counsellors or Sergeants at the Law, which bee those who in Latine are called *causidici* or *aduocati*, chooseth two of the most approued for learning, age, discretion, and exercise, of whom the one is called chiefe Iustice of the Kings bench, or simply chiefe Iustice, the other of the common place, and others to the number of fiue or more, which haue each an ordinarie fée or stipend of the Prince.

These doe sit at such dayes as be terme, which may bee called *Dies legitimi iuridici*, or *fasti*, in their distinct places as I haue said before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for mony, or land, or possession, part by writing, and part by declaration and altercation of the aduocates the one with the other, it doth so proceed before them till it doe come to the issue, which the Latines doe call *statum causæ*, I doe not meane *contestationem litis*, but as the Rhetoritians doe call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessell issueth out, and is boiled and emptied) and no where else: that stroke well striken is the departing of all the quarrels. Issues or *status* in our Law be ordinarily two *facti* and *iuris*.

## Chap. XIIII,

### Of the Kings bench.

THe Kings bench is the Kings Court, so called because vsually the Kings haue sitten there, and also because

because that therein all causes are handled which appertaine to the Crowne: and such causes as wherein the King or Quæne is a partie, if they properly appertaine not to some other court.

The Judges of the Kings Bench are the Lord chiefe Justice of England with other his companions assistant in giuing iudgement.

The Sergeants and Counsailours doe debate the cause.

The sentence is giuen by the chiefe Justice, the others all or the most part assenting, as it shall appeare to be in other Courts likewise. If they cannot agree, then is the matter referred to a demurre in the exchequer chamber before all the Justices of both the Benches, viz. the Kings Bench, and the Common pleas, and the Lord chiefe Baron of the Exchequer.

The Officers in the Kings Bench, are the chiefe Protonothary, the Secondarie, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Custos Brevium, and Custos Sigilli.

The Protonotharie is hee, that recordeth all iudgements, orders, and rules in this Court, and all verdicts giuen, being not of Crowne matters.

The Secondarie is the Protonotharies deputie, for the said causes, and hee is the keper and maker vp of these Records in bookes.

The Clarke of the Crowne, is to frame all inditements of felonie, treason, murther, &c. all manner of appeales, and after to record them and enter the verdict and to make and kepe the Records touching these matters.

The Clarke of the Exigents is to frame all manner of Processes of *Exigi facias*, which doe issue out of that Court to out law any man, and to record the out-lawrie.

The

The clarke of the Papers is he that keepeth all Rols, Scripts, and pleadings, and other things in writing which are not of record.

The custos brevium is hee which fileth all the writs iudiciall and originall, after the Sherife hath returned them, he is chargeable if any be embeseled or privily conueyed away from the file.

The custos Sigilli is hee that doth keepe the Seale, and seeketh all iudiciall Writs and all Patents, licences issuing out of this court, and taketh the fee due for them, and thereof to make his account.

There are certaine Atturnies belonging to this court in number as the Protonotharie shall appoint: those are for Plaintiffes and defendants in euery cause and they frame and make the pleadings.

The maner of proceeding in this court is by Latitat, Arest, and Bill.

The Latitat is to bring the partie in, when he is not to be found or will not appeare and answere.

Arrest is when the partie is arrested, and then is driuen to finde baile, viz. two sufficient sureties or more as the case shall needs.

By Bill the suite is when the party is in *Custodia Mareschalli*, and is from thence brought to answer.

The Matters in this court are properly all matters of the crowne, whereof see Standfords booke aforesaid.

In these they proceed by inditements, verdict, appeale, improperly all suites wherein the King is a party, or haue any losse. Such are conspiracies, champarties, Imbracer, Maintenance, Decies tantum maymes, Slanders, actions sur le cas: of these see Natura brevium.

Chap.

## Chap. XV.

### Of the Court of common pleas

THE Court of common-pleas is the Kings Court, wherein are holden all common pleas betweene ſubiect and ſubiect, of all matters of common law: ſo called, for that it ſerueth for the exact and preciſe adminiſtration of the common law.

The Iudges in this Court are, Lord chiefe Iuſtice of the common pleas, three other his aſſociates. The Sergeants at the Law whoſe number is ſome-times more, ſome-times leſſe, at the pleaſure of the Prince. Theſe all are ſworne to ſerue the turne of the common Law at this barre.

Two of them are alwayes appointed to ſerue the Princes turne in what court ſoeuer, and are called the Kings Sergeants.

The Officers of this court are the Cuſtos Breuium, three Protonotaries, the clarke of the warrants, the clarke of the Eſſoynes, diuers Attornies, Filliſers for euery ſhire, Exigenters for euery ſhire, the clarke of the Iuries, the cirographer for fines, the clarke of the Kings fiuer for errours in this court committed, the clarke of the ſeale, as before for the Kings bench.

The cuſtos Breuium is the chiefe clarke in the court and he hath the cuſtodie of all the Writs whatſoeuer returnable into this court, come they either at the day of the returne, or after the day which is called Poſt diem.

The Protonotaries are they which after the parties haue appeared in court, doe enter the matters in ſuite, and make the pleadings, and enter them.

The Filliſers are they which make vp al meane proceſſe vpon the originall Writs, and the ſame Writs re-

turned by the Sherife, are by the Atturnies deliuered to the custos Brevium to file or string, there to remaine of record.

The Exigenters are such as make out the Exigentes and Writs of proclamation to euerie countie, where the parties are, that vpon the same proceſſe or ſummons will not appeare.

The clarke of the warrants is he which hath take the warrants of an Atturney, which ſhall proſecute for the plaintife or defendant: and is he that enrolleth all deeds acknowledged before the Iuſtices of the ſame court.

The clarke of the Eſſoynes, is he which doth eſſoyne the defendants in euery action, before the day of his appearance.

An Eſſoyne is an ordinarie delay by office of court in action: and the officer before whome the clarke is to take the Eſſoyne, is the puny Iuſtice in the common pleas, who for that purpoſe, fitteth three daies before the Tearme.

The common Atturnies are ſuch as are allowed in this court by the Lord chiefe Iuſtice of the common pleas, & his aſſiſtants to proſecute or defend according to the inſtructions of their clients for the plaintife or defendant

The clarke of the Iuries is hee that doth make the Venire Facias to the Sherife to warne the Iuries by.

The cirographer is he that hath the writ of couenant with the concord brought vnto him, and he maketh Indenture tripartite, wherof two are deliuered to the partie for whoſe vſe the fine is acknowledged. And the third part is reſerued with him. And all the proclamations of the ſame fine according to the ſtatutes made, are endorced on the third part remaining, and it is commonly called the foote of the fine.

The clarke of the Kings ſiluer is a diſtinct office of the fines, and is he who ſetteth down the money that his Maieſtie

Maiesty is to haue for the fine, according to the yeerely value of the Land confessed, knowne deposed or agreed vpon.

All errors in this court commited, are reformed in the Kings bench, before the Lord chiefe Iustice, and other Iustices there assistant by Writ of errour.

There is also the clarke of the out-lawries, who is the Kings Attornie generall, and he entreth the outlawrie for the King, after the exigent deliuered: and he maketh all the writs of out-lawrie: and none are to be made but by him.

The matters of the Common pleas, are all suits of Common Law commenced by any writ originall, reall, or personall.

Reall are such as touch the inheritance, or fée of any man.

Personall are such as touch transitorie things, as goods, chattels, personall wrongs, &c.

The difference betweene a writ originall, and a writ iudiciall, is this: the originall saith in the end of it (in the person of the King or Quéene) teste me ipso, or me ipsa, apud Westmonasterium. The iudiciall writ saith in the end, Teste Christophoro Wray, or Teste Iacobo Dier, or such other as shall be the Lord chiefe Iustice of either of those benches.

The order of processe how they follow the one after the other. In this Court is first a Summoneas in some action, then Attachias, but in most a Capias, then a Capias pluries, then Exigi facias, and a proclamation into the countie where the defendant dwelleth.

The Summoneas is the originall, and goeth out of the Chauncerie, and is directed to the Sherife, to bring the partie by a day

The Sherifes order in seruing this writ, is to goe himselfe, or his Bailife, to the Land and there to garnish

the partie, by sticking vp a sticke on his Land, which done, the Sherife returneth two common pledges, Iohannes Do, and Richardus Ro. and two Summonees, Richardus Den, Henricus Fen. After the Summonees, if the partie come not in, issueth out an Attacheas in nature of a precept, to authorize the Sherife to goe to his Land or house and there to take a pledge for his appearance.

But if the partie plaintife meane to out-law the defendant he getteth a Summoneas out of the Chancerie to the Sherife to warne the partie, who returneth nihil habet, &c. Then the plantife getteth a Capias to take his body, and then an Alias capias, then a pluries capias, to all which the Sherife returneth in order as they bee giuen out, Non est inuentus. After which if the partie appeare not, goeth out to the Sherife the Exigi facias, and a proclamation to proclaime the partie in fiue seueral Countie daies: after which proclamations, if he doe not appeare, he is returned Quinto exactus, & non comparuit & ideo vtlagatus, vnlesse hee doe first purchase a Supersedeas, to the Court to surcease. The Supersedeas is granted at the suite of the defendant; to stay the outlawrie, it is an apparance to the suite for the defendant, suggesting to the Court, that his exigent improuide emanauit shewing that the defendant was alwaies readie to appeare by his Atturney. This done the plaintife declareth, the defendant answereth, if the answere be issuable they proceed to triall. The maner of proceeding is either to ioyne issue, and so to passe to verdict, or else to demurre. The triall is by verdict, when the question is made de facto, as where the matter was done, when, by whom, &c.

Chap.

## Chap. XVI.

### Of the two manner of issues.

IF the question be of the Law, that is, if both the parties doe agrée vpon the fact, and each doe claime that by law he ought to haue it, and will still in that sort maintaine their right, then it was called a demurrer in Law where if in the Law the case séeme to the Judges that sit doubtfull, it is called a checker chamber case, and all the Judges will mæt together, and what they shall pronounce to be the Law, that is held for right, and the other partie loseth his action or Land for euer. If the Sergeants or Councellers doe stand vpon any point in the Law which is not so doubtfull, the Judges who bee taken for most expert, bids him goe forward, and if hee hath no other to say, but standeth vpon that point of the Law, that bidding goe forward, is taken that he loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the Law or Iuris. So is that case where the law is not doubtfull, according to the matter contained in the declaration, answere, replication, reioynder, or triplication, the Iudge out of hand decideth it. And it is the manner that each partie must agrée to the other still in the fact which hé cannot denie. For if hee once come to denie any déede as not done, not his writing, that the man by whom the aduersarie claimeth, was not the aduersaries auncestor, or the euidence which the aduersarie bringeth, is not true or, that his gift was former, or any such like exception, which is auaileable to abate the action, or barre the partie, and the other ioineth in the affirmatiue, and will auerre and proone the same, this is called the issue, and immediately all question of the law ceaseth as agreed by both the parties, that there is no

But sometimes it is determined by the same Court only.

This should be meant of a respondes ouster, when the opinion is against him that taketh an exception, which is not peremtorie he may denie it by protestatiō.

queſtion in the law. Then as the iſſue facti is found by the twelue men of whome we ſhall ſpeake hereafter, ſo the one partie or other looſeth his cauſe and action: ſo that contrary to the manner of the ciuil law, where firſt the fact is examined by witneſſes, indices, torments, and ſuch like probations, to finde out the truth thereof, and that done, the aduocates doe diſpute of the law, to make of it what they can; ſaying, ex facto ius oritur. Here the Sergeants or Counſellors before the Iudges do in paſſing forward with their pleading determine and agree vpon the law, and for the moſt part, and in a manner all actions, aſwell criminall as ciuill, come to the iſſue and ſtate of ſome fact which is denied of the one partie, and auerred of the other, which fact being tried by the twelue men, as they find, ſo the action is wonne or loſt. And if a man haue many peremptorie exceptions (peremptorie exceptiõs I cal only thoſe which can make the ſtate & iſſue, becauſe the twelue men be cõmonly rude & ignorant, the partie ſhal be compelled to chuſe one exception whereupon to found his iſſue, which choſen, if hee faile in that by the verdict of twelue men, hee looſeth his action and cauſe, and the reſt can ſerue him for nothing.

Hauing ſeene both in France and in other places many deuiſes edicts and ordinances, how to abridge proceſſe, and to finde how that long ſuites in law might be made ſhorter, I haue not perceiued nor read, as yet, ſo wiſe, ſo iuſt, and ſo well deuiſed a meane found out as this, by any man among vs in Europe.

Truth it is, that where this faſhion hath not beene vſed and to them to whom it is new it will not be ſo eaſily vnderſtood, and therefore they may peraduenture be of contrarie iudgment: but the more they doe weigh and conſider it, the more reaſonable they ſhall find it.

How the iſſue, queſtion, or ſtatus iuris is decided, I haue told now I will ſhew how it is tried when it doth come

come to the question, state, or issue of the deede or fact. And first I must speake more largely of the manner of proceeding in the processe, and of such persons as be necessarie for the execution thereof.

## CHAP. XVII.

### Of the Sherife of the shire, and of the Court of Exchequer

THE Romans had to execute the commandements of the Magistrates, Lictores, Vlatores, Accensos. The Ciuill Law since that time hath other names, termes, and officers. The execution of the commandements of the Magistrates in England is ordinarily done by the Sherifes. The Sherife (which is as much to say as the Reeue or Baily of the shire) is properly word for word Quæstor Prouinciæ, it is he which gathereth vp and accounteth for the profits of the shire, that come to the Exchequer.

Scats in ancient Saxon is that which we by a borrowed terme call tresure, whereof is deriued Scaccarium, signifying a Court dealing with the Kings treasure or reuennues, and also Escactor, that is an Officer which imployeth the Kings profit.

The Exchequer (which is Fiscus Principis, or ærarium publicum, and I cannot tell in what language it is called Scaccarium, some thinke it was first called statarium, because that there was the stable place to account for the reuenues of the Crowne, as well that which came of patrimonie, which we call the demeasnes, as that which commeth of other incident requisitions, bee they rents, customes, tenthes, quinsiesmes, tayes, subsidies whersoeuer the Prince or his Court be according to the time and occasion) was a place stable, continuall, and appointed for to reckon and account. The hearers of the account (who in Latine may be called tribuni ærarij) haue auditors vnder them, which the Latines doe call Rationales, but they are the chiefe for the accounts of the Prince, and may be called iuridici rationales, in English we call them Barons of the Exchequer, whereof is one

who

who is called the chiefe Baron, as Tribunus, or Iuridicus rationalis primus, or princeps, with others to them assistant: the Chancellor of the Exchequer, two Chamberlaines, and Atturney generall. The chiefe of all is called high Treasurer of England, as you would say in Latine, Supremus ærarij anglici quæstor, or Tribunus ærarius maximus.

He hath the charge & keeping of the King or Quænes treasure, & many officers are at his sole appointment & to him accountant, as well in the Tower, Exchequer, as else where, as Auditors in the Mint, Auditors and tellers in the Exchequer, Receiuers &c.

The Chauncellour is the vnder Treasurer, and is gouernour of the Court, vnder the high Treasurer. Many Officers also are at his appointment.

The chiefe Baron is the iudge in law causes incident to this Court, the three other Barons are assistants.

The Atturney is the Atturney generall, to defend the Kings right, and to peruse all grants, particulars, suits and causes handled in this Court. There are common Atturnies besides, which serue for the suiters of this Court.

The other officers are two Remembrancers, two Clarkes of the Pipe, two of the first fruits and tenthes.

The Remembrancers are those which kepe all the Records of the Exchequer betweene the King and his subiects, and enter the rules and orders there made, the one is for the Prince, the other is for the Lord Treasurer.

The Clarkes of the Pipe are those that make leases vpon particulars, and receiue the Sherifes accounts, those receiue also the bonds & titles of other assurances.

In the office of the first fruits, are receiued all first fruits due to his Maiestie by Bishops, Deanes, and all Ecclesiastical Persons, answerable by order of the law.

other

Other officers are Tellers, Auditors, Collectors, rent-gatherers, tailemakers, &c.

The matters of this court are all penal punishments as intrusions, alienations without licence, penal forfaitures vpon popular actions (as a popular action is while the one part is giuen to the informer, the rest to the Prince.) Of these see the whole bodie of statutes at large or in Rastalls collection.

In this Court are handled all paiments, accounts, expences of the Kings reuenues.

The vsuall Proceſſe of this Court is a *Subpena* out of this Court, or a meſſenger to call the partie.

In this Court bee heard Quadruplatores, which wee call promoters, which bee thoſe that in popular and penal actions be delatores, hauing thereby part of the profit by the law aſſigned. In this Court if any queſtion bee, it is determined after the order of the common law of England by the twelue men, as I haue ſaid: and all cuſtomers which were in Latine called Publicani, in Greek *Telonai*, doe account in this office.

The Sherife of the ſhire is called in our common Latine Vicecomes, as one would ſay, Vicarius comitis, or Procomes, doing that ſeruice, to attend vpon the execution of the commaundements of the Tribunals or Iudges which the Earle or Countie ſhould do: which Earle or Countie for the moſt part was attending vpon the Prince in the wars, or otherwiſe about the Prince, as the word beareth comes principis: whereby it may appeare, that the chiefe office of the County or Earle, was to ſee the Kings iuſtice to haue courſe, and to be wel executed in the ſhire or Countie, and the Princes reuenues well anſwered, and brought in ærarium principis, which is called of vs the treaſurie.

If any fines or amercements, which in Latine bee called Mulctæ, bee leuied in any of the ſaid Courts vpon

any man, or any arrerages of accounts by the Latines called reliqua, of such things as is of customes, tares, subsidies, or any other such occasions, the same the sherife of the shire doth gather, and is respondent therefore in the Exchequer. As for other ordinarie rents of patrimoniall lands, and most commonly for the tares, customes, and subsidies, there be particular receiuers and collectors which do answere it into the Exchequer. The Sherife hath vnder him an vnder Sherife at his charge and appointment, learned somewhat in the law, especially if he be not learned himselfe, and diuers Bailifes which be called errants, whom he makes at his pleasure, who can know each land and person in the shire, and their abilitie, to go vpon enquests, either to destraine, or to summon him to appeare whom the sherife shal appoint, and for this cause to the sherifes, as to the Minister most proper of the law the Writs be directed.

When any thing commeth to an issue of the deed or fact, there is a Writ and writing directed to the Sherife of the shire where the land is, whereupon the controuersies, or where the man dwelleth of whom the money is demanded, which writ is called *venire facias*. Then after the same effect an *alias*, *pluries*, or *distringas*, according to the nature of the action to the returne of the Sherife. And if for any disobedience of not comming and appearing there be a fine (which the Latines do call *Mulcta*) set vpon any Iurors head, the Sherife is charged with it, and taketh the distresses which in Latine is called *Pignora*, and answereth therefore to the Exchequer. The Sherife is also readie by himselfe or by his vnder Sherife, to serue as well the Iustices of peace in their quarter Sessions, as the Iustices called *Itinerantes* in their great Assizes, when they come into the shire, which is twice in the yeere to dispatch and void actions criminal and ciuill depending at the common law, and which be-

come

come now to the issue. He hath also the charge of all the prisoners committed to the prison which wee call the goale, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister, and highest for execution of such commandements, according to the Law, as the Judges ordaine, and this is enough for the Sherife.

## Chap. XVIII.
### Of the twelue men.

Of what manner and order of men in the common-wealth, the twelue men be, I haue alreadie declared. The Sherife alwaies warneth foure and twentie to appeare, lest peraduenture any might be sicke or haue a iust cause of absence: and if there be not enow to make an enquest, the absents be amersed. For although they be called twelue men, as a man would say *duodecem viri*, yet if they be twelue, twentie, or the whole number of foure and twentie, that is no matter, twelue they must be at least to make an enquest, or as some call it a quest. And enquest or quest is called this lawfull kind of triall by twelue men. In actions ciuill, which is either of contracts or for land, or possession, when so many of those that be warned appeare at the call, as be able to make an enquest, which as I said before bee no lesse then twelue, either part when they be come taketh their challenges against so many of them as they will, which be, that he may not spend so much land a yéere, he is allied, fée, seruant to his aduerse partie, hée is his enemie, &c. And two of the whole number do trie, and allow or disallow the rest.

If after exceptions, there be so many reiected that there is not a full enquest, in some cases that day is lost, in some the enquest is filled ex circumstantibus: when the

queſt is full, they bee ſworne to declare the truth of that iſſue according to the euidence, & their conſcience. Then the Sergeants of either ſide declare the iſſue, and each for his Clyent ſaith as much as hee can. Euidences of writings be ſhewed, witneſſes be ſworne, and heard before them, not after the faſhion of the Ciuill Law, but openly, that not only the twelue but the Iudges, the parties, and as many as bee preſent may heare what each witneſſe doth ſay: The aduerſe partie or his aduocates which we call Counſailors and Sergeants, interrogateth ſometime the witneſſes, and driueth them out of countenance.

Although this may ſeeme ſtrange to our Ciuilians now, yet who readeth Cicero and Quintilian, well ſhall ſee, that there was no other order and manner of examining witneſſes, or depoſing among the Romans in their time. When it is thought that it is enough pleaded before them and the witneſſes haue ſaid what they can, one of the Iudges with a briefe and pithie recapitulation reciteth to the twelue in ſumme the arguments of the Sergeants of either ſide, that which the witneſſes haue declared, and the chiefe points of the euidence ſhewed in writing, and once againe putteth them in mind of the iſſue, and ſometime giueth it them in writing, deliuering to them the euidence which is ſhewed on either part, if any bee, (euidence here is called writings of contracts, autenticall after the manner of England, that is to ſay, written, ſealed, and deliuered) and biddeth them goe together.

Then there is a Bayliffe charged with them to keepe them in a chamber not farre off, without bread, drinke, light or fire: vntill they be agreed: that is, till they all agree vpon one verdict concerning the ſame iſſue, and vpon one among them who ſhall ſpeake for them all when they be agreed: for it goeth not by the moſt part, but each man

man muſt agree. They returne, and in ſo few words as may be, they giue their determination: few I call ſixe, ſeauen, or eight words at the moſt (for commonly the iſſue is brought ſo narrow, that ſuch number of words may be enough to affirme or to deny it) which done they are diſmiſſed to goe whether they will. The party with whome they haue giuen their ſentence, giueth the enqueſt their dinner that day moſt commonly, and this is all that they haue for their labour, notwithſtanding that they come, ſome twentie, ſome thirtie, or fortie miles or more, to the place where they giue their verdict, all the reſt is of their owne charge. And neceſſarily al the whole twelue muſt be of that ſhire, and foure of them of the hundred where the Land lieth which is in controuerſie, or where the partie dwelleth who is the defendant.

## CAHP. XIX.

### Of parts of Shires called Hundreds, Lathes Rapes Wapentakes.

AN Hundred, or Lath Rape, or Wapentake is called of the diuiſions or parts of ſhires, in diuers Countries diuerſly named, after the manner and language of each Countrie. For the ſhires be deuided, ſome into ten, twelue, thirteene, ſixteene, twentie, or thirtie Hundreds, more or leſſe, either that they were at the firſt a Hundred Townes and Villages in each Hundred: and although now they bee but ſixteene, twentie, thirtie, fortie, fiftie, threeſcore, more or leſſe, yet it is ſtill called an Hundred, or elſe there were but ſo many at the firſt as bee now, or a few more or leſſe, & they did find the King to his wars an hundreth able men. Lath, and Rape I take to bee names of ſeruice, for that ſo many Townes in old time and in the firſt pouertie of the Realme did meet togeth in one day to carry the Lords corne into his barn, whe

is called in old English a Lath. Or that they met at commandement of the Lord to reape his corne.

Wapentake I suppose came of the Danes, or peraduenture of the Saxons. For that so many townes came by their orders then, to one place, where was taken a muster of their Armour and weapons, in which place from them that could not find sufficient pledges for their good abearing, their weapons were taken away: weapon or wapon in old English do signifie al Armes offensiue, as sword, dagger, speare, lance, bill, bowes, arowes.

Of the place where the musters were taken, or where the said seruices were done, the hundreds, lathes rapes, and wapentakes, had and haue yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime now in places whereof the hundred hath the name, no mention nor memory of a towne remaineth: such mutation time bringeth with it of al things. A hundreth hath one or two high Constables, who haue some authoritie ouer all the lower and particular Constables. Those high Constables bee made by the Iustices of the peace of the shire, and each hundred hath his Bailife who is made by the Lord, if any hath that libertie, or else by the Sherife of the shire for the time being.

## Chap XX.

### Of the Court Baron.

It may appeare strang that of thirtie sir shires, whereof each shire is deuided into diuers hundreds, each hundred containing diuers Parishes, al pleading should be but in one place, that is in Westminster Hall, & that but in certaine times of the yeare, making litle more then one quarter of the yeare in the whole. And one would thinke that there should be much lacke of Iustice

and

and right, and much wrong taken without redreſſe. But it is not ſo: The people being accuſtomed to liue in ſuch an equalitie of Juſtice, & that in ſuch ſort, that the rich hath no more aduantage therin then the poore, the Proces and proceedings to the iudgment being ſo ſhort, and iudgments alſo being peremptory and without appellation: yet to help for ſmall matters where no great ſumme is in queſtion, there are other Courts. In euery ſhire from three weeks, to three weeks, the Shreife for ſmall things not paſſing fortie ſhillings, and in certaine hundreds & liberties the Baylife likewiſe from three weeks to three weeks holdeth plea. And whoſoeuer is poſſeſſioner & owner of a Mannor, may hold from three weeks to three weeks, or at his pleaſure, of his Tenants, and amongſt his Tenants, a court called a court baron, and there his Tennants being ſworne make a Jurie, which is not called the enqueſt, but the homage. Theſe principally doe enqure of the copie-holders, and other free holders that be dead ſince the laſt Court. and bring in their heires and next ſucceſſors, and likewiſe of incrochment or intruſion of any of the Tennants againſt the Lord, or among themſelues. They make orders and lawes amongſt themſelues, the paine of them if they be after broken, commeth to the Lord. And if any ſmall matter be in controuerſie, it is put to them, & commonly they doe end it. But theſe Courts doe ſerue rather for men that can be content to be ordered by their neighbors and which loue their quiet and profit in their husbandry more then to be buſie in law. For whether partie ſo euer will, may procure a writ out of the higher Court, to remoue the plea to Weſtminſter.

In Cities and other great townes there be diuers liberties to hold plea for a bigger ſumme, which doe determine as well as the Common Law and after the ſame manner, and yet for them that will it may bee

remoued

remoued to Weſtminſter Hall.

King Henrie the eight ordained firſt a preſident, counſailours, and Iudges, one for the Marches of Wales, at Ludlow, or elſe where: another for the North partes of England, at Yorke, where be many cauſes determined. Theſe two are as be Parliaments in France. But yet if there be any matters of great conſequence, the partie may moue at the firſt, or remoue it afterwards to Weſtminſter Hal, and to the ordinarie Iudges of the Realme or to the Chancellor, as the matter is.

Theſe two Courts doe heare matters before them, part after the Common-law of England, and part after the faſhion of the Chancerie.

## CAHP. XXI.

### Of the Leete, or Law day

LEete, or Law day is not incident to euery Mannor but to thoſe onely which by ſpeciall grant, or long preſcription, haue ſuch libertie. This was, as it may appeare, firſt a ſpecial truſt and confidence and commiſſion giuen to a few put in truſt by the Prince, as is now to the Iuſtices of peace, to ſee men ſworne to the Prince, to take pleadges and ſureties in that manner of one for another to anſwere for obedience and truth, to enquire of priuie conſpiracies, frayes, murders, and bloud-ſheds, and to this was added the ouerſight of bread and ale, and other meaſures. Many times they that be out of the homage and Court Baron of that Mannor and Lordſhip, bee neuertheleſſe attrained and anſwerable to come to the Leete. This Leete is ordinarily kept but twice in the yeare, and that at termes and times preſcribed.

The Leete and Law day is all one, and betokeneth word for word, *Legitimum* or *iuridicum diem*. Law the old Saxons called *lant* or *lag*, and ſo by corruption and chan-

changing of language from *Lant* to *Leete*, vnderſtanding day. they which keepe our full Engliſh terme, call it yet law yad

## Chap. XXII.

### Of the proceedings of cauſes criminall, and firſt of the Iuſtices of the Peace.

Before the manner of proceeding in cauſes criminall can be well vnderſtood, it wil be neceſſary to ſpeake of three perſons, the Iuſtices of peace, the Coroners, and the Conſtables. The Iuſtices of peace be men elected out of the Nobilitie, higher and lower, that is the Dukes, Marquiſes, Barons, Knights, Eſquires, & Gentlemen, and of ſuch as be learned in the Lawes ſuch, and in ſuch number as the Prince ſhall thinke meete, and in whom for wiſedome and diſcretion he putteth his truſt, inhabitants within the Countie: ſauing that ſome of the high Nobilitie and chiefe Magiſtrates for honours ſake are put in all, or in the moſt of the commiſſions of all the ſhires of England. Theſe haue no time of their rule limited, but by cõmiſſion frõ the prince alterable at pleaſure. Iuſtices of quorum.

At the firſt they were but foure, after eight, now they come commonly to thirtie or fortie in euery ſhire, either by increaſe of riches, learning, or actiuitie in policie and gouernment. So many more being found, which haue either will, or power, or both, are not too many to handle the affaires of the Common wealth in this behalfe. Of theſe in the ſame commiſſion bee certaine named, which be called of the *Quorum*, in whom is eſpeciall truſt repoſed, that where the commiſſion is giuen to fourty or thirtie and ſo at the laſt it commeth to foure or three, it is neceſſary for the performance of many affaires to haue likewiſe diuers of the *Quorum*. The words of commiſſion be ſuch *Quorum vos* A B C D. E F. *vnum eſſe volumus.*

The Iustices of the peace bee those in whom at this time for repressing of robbers, theeues and vagabonds, of priuie complots and conspiracies, of riots, and violences, and all other misdemeanors in the Common-wealth, the Prince putteth his speciall trust. Each of them hath authoritie vpon complaint to him made of any theft, robberie, man-slaughter, murder, violence, complots, riots, vnlawfull games, or any such disturbance of the peace, and quiet of the Realme, to commit the persons whom hee supposeth offenders, to prison, and to charge the Constable or Sherife to bring them thither, the Iayler to receiue them, and keepe them till he and his fellowes do méete. A few lines signed with his hand is enough for that purpose: these dos méete foure times in the yéere, that is, in each quarter once, to enquire of all the misdemeanours aforesaid: at which daies the Sherife or his vnder-Sherife with his Baylifes be there to attend vpon him, who must prepare against that time foure enquests of foure and twentie yeomen a peece, of diuers hundreds in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. These fiue enquests are sworne before them to enquire of all heretiques, traytors, thefts, murthers, man-slaughters, rapes, false moniers, extortioners riots, routs, forcible entries, vnlawfull games, and all such things as be contrarie to the peace and good order of the Realme, and to bring in their verdict. If they among themselues vpon their owne knowledge doe find any culpable, they cause one of the Clarkes to make the bill. And if any bee there to complaine vpon any man for these faults, hee putteth in his bill, which bill is presented first to the Iustices sitting vpon the bench, to sée if it be conceiued in forme of law, which done the complainant doth deliuer it to one of these enquests, and after the complainant is sworne, he declareth to them what he can, for the proofe of it. And if they find

This is not alwaies and in al places obserued but onely concerning the graund enquest.

find it true, they do nothing but write on the backside of it, *billa vera*, as ye would say, *scriptum verum*, or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted. The manner of the Bill is such, *Inquiratur pro domino rege*.

If they doe not find it true, they write on the backside *Ignoramus*, and so deliuer it to the Iustices, of whom it is rent into pieces immediatly: he that is indicted is accounted a lawfull prisoner, and after that time looked more straightly vnto. For this inditement is no conuiction: and if he be indited, and be not already in prison, the Sherife if he can find him, bringeth him into prison: if he cannot find him, processe is made out against him, to render himselfe prisoner, or else he shall bee outlawed. So he is called three times in diuers countie dayes to render himselfe to the law. The fourth is called the exigent, by which he is outlawed not rendring himselfe, as ye would say: *exactus* or *actus in exilium*. The out-law loseth all his goods to the King for his disobedience. But if after he will render himselfe to answere to the law, & shew some reasonable cause of his absence, many times of grace his outlawrie is pardoned. These mætings of the Iustices of peace foure times in the yeere, be called quarter sessions, or sessions of enquirie, because that nothing is there determined touching the malefactors, but only the custodie of them: and this kind of proceeding which is by inquisition of the twelue men within themselues, and their owne consciences, or by denunciation of him that putteth in his bill to the twelue, is called at the Kings suite, and the King is reckoned the one partie, and the prisoner the other. The Iustices of the peace doe meete also at other times by commandement of the Prince vpon suspition of warre, to take order for the safety of the shire, sometimes to take musters of harnesse and able men, and sometimes to take order for the excessiue wages of seruants and

labourers, for excesse of apparel, for vnlawful games, for conuenticles and euill order in Alehouses, & Tauernes, for punishment of idle and vagabond persons, and generally as I haue said for the good gouernment of the shire, the Prince putteth his confidence in them. And commonly euery yeare, or each second yeare in the beginning of Summer or afterwards, (for in the warme time the people for the most part bee more vnruly) euen in the calme time of Peace, the Prince with his Counsell choseth out certaine articles out of penall Lawes alreadie made for to represse the pride & euill rule of the popular, and sendeth them downe to the Iustices, willing them to look vpon those points, and after they haue met together, and consulted among themselues, how to order that matter most wisely & circumspectly, wherby the people might be kept in good order and obedience after the law, they diuide themselues by three or foure; & so each in his quarter taketh order for the executiõ of the said articles.

And then within certaine spate they mæt againe and certifie the Prince or his priuie Counsell, how they doe find the shire in rule & order touching those points, and all other disorders. There was neuer in any Common-wealth deuised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as it were in a bridle of good order and sooner loked vnto that they should not offend, then punished when they haue offended. For seeing the chiefe amongst them, their rulers, haue this special charge, and do call vpon it, and if occasion so do present, one or two presently are either punished, or sent to prison for disobedience to those old orders and lawes, they take a feare within themselues, they amend, and doe promise more amendment. So that it is as a new furbushing of the good lawes of the Realme, and a continuall repressing of disorders, which do naturally rest among men.

But

But as the inuention of this, and the vse and execution thereof is the most benefit that can be deuised for the Common-wealth of England: so whē it shall be misused, dissembled with, or be condemned, and be done *pro forma tantum*, and as they terme it in France, Par maincre d'acquit only, it will be the present ruine (though not at the first perceiued) of the Common-wealth. Of which the fault may be as well in the commanders for not making good choice, what, and how they command, as in the commanded, for not executing that which is commanded.

## Chap. XXIII.

### Of Hue and Crie, and recognisance taken vpon them that may giue euidence.

By the old law of England, if any theft or robbery be done, if he that is robbed, or hee that seeth or perceiueth that any man is robbed, do leuy hue and crie, that is to say, do crie and call for aid and say that a theft or robbery is done contrary to the Princes peace & assurance: the Constable of the Village to whom he doth come, and so make that crie, ought to raise the parish to aide him and seeke the theefe, and if the theefe be not found in that parish, to go to the next and raise that Constable, and so still by the Constables and them of the Parish one after another. This hue and crie from Parish to Parish is carried till the theefe or robber be found. That Parish which doth not his duty, but letteth by their negligence the theefe to depart, doth not only pay a fine to the King, but must repay to the partie robbed his dammages. So that euery English man is a Sergeant to take the theefe, and who sheweth himselfe negligent therein, doe not onely incurre euill opinion therefore, but hardly shall escape punishment: what is done with the theefe or robber when he is taken, I shall shew you hereafter. The same

manner is followed if any man be slaine, for straight the murtherer is pursued of euery man till he be taken. So soone as any is brought to the Iustices of peace by this hue & crie, by the Constable, or any other who doth pursue the malefactor, he doth examine the malefactor, and writeth the examination, and his confession: then he doth bind the party that is robbed, or him that sueth, and the Constable, and so many as can giue euidence against the malefactor to be at the next sessions of gaole deliuerie, to giue their euidence for the King. He bindeth them in recognisance of ten pound, twentie pound, thirtie pound, fortie or an hundred pound, according to his discretion, and the qualitie of the crime: which certified vnder his hand, is leuied vpō the recognisance, if they faile of being there.

## Cahp. XXIIII.
### Of the Coroner.

But if any man, woman, or child, be violently slaine, the murtherer not knowne, no man ought or dare bury the body before the Coroner hath seene it. The Coroner is one chosen by the Prince of the meaner sort of gentlemen, and for the most part a man séene in the lawes of the Realme, to execute that office. And if the person slaine (slaine I call heere, whosoeuer hee bee, man, woman, or child, that violently commeth to his death, whether it be by knife, poison, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner do come (which for the most part men dare not do) he doth cause the bodie to bee taken vp againe, and to bee searched, and vpon the sight of the body so violently come to his death, he doth empanell an enquest of twelue men or moe, of those which come next by, be they strangers or inhabi-

in habitants, which vpon their oathes, and by the sight or view of the bodie, and by such informations as they can take, must search how the person slain came to his death, and by whom as the doer or cause thereof. These are not enclosed into a strait place, (as I told before of other enquests) but are suffered to go at large, and take a day, sometime after twentie or thirtie dayes, more or lesse, as the fact is more euident, or more kept close, to giue their euidence, at which day they must appeare there againe before the said Coroner to giue their verdict. So sometime the person to haue slaine himselfe, sometime the brother, the husband, the wife, the sister, some of acquaintance or stranger, such as God will haue reuealed, be taken. For whosoeuer they doe find as guiltie of the murther, hee is straight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as ye shall see hereafter.

The empanelling of this enquest, and the view of the bodie, and the giuing of the verdict, is commonly in the street in an open place, and in *Corona Populi*: but I take rather that this name commeth, because that the death of euery subiect by violence is accounted to touch the Crowne of the Prince, and to be a detriment vnto it, the Prince accounting that his strength, power, and Crowne doth stand and consist in the force of his people, and the maintenance of them in securitie and peace.

## Cahp. XXV.
### Of the Constables.

THese men are called in the elder bookes of our lawes of the Realme *Custodes pacis*: and were at the first in greater reputation than they be now. It may appeare that there was a credit giuen vnto them, not altogether vnlike to that which is now giuen to the Iustices of peace. To this day if any affray chaunce to be made the Con-

Constables ought and wil charge them that be at debate to kepe the Princes peace, and whosoeuer refuseth to obey the Constable therein, all the people will set straight vpon him, and by force make him to render him selfe to be ordered. Likewise if any be suspected of Theft, or receiuing, or of murther, or of man slaughter, the Constable may take such persons, yea enter into any mans house with sufficient power to search for such men till he finde them: and if he see cause, kepe the suspected person in the stocks, or custodie, till hee bring them before a Iustice of the Peace to be examined. But for so much as euery litle Village hath commonly two Constables, and many times Artificers, Labourers, and men of small abilitie be chosen vnto that Office, who haue no great experience, nor knowledge, nor authoritie: the Constables at this present (although this they may doe vpon their owne authoritie) yet they seeme rather to bee as it were the executors of the commaundement of the Iustices of Peace. For the Iustice of peace as soone as he vnderstandeth by complaint that any man hath Stollen, Robbed, slaine, or any seruant or labourer without licence, hath departed out of his Masters seruice, or any that liueth idle and suspectedly, knowing once in what Parish he is, hee writeth to the Constable of the Parish, commanding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Iustice, and if the Iustice doe find cause, he committeth him to the same Constable to conuey him further to the Princes Gayle, where the partie must lie, till the Iustices of Peace doe meete either at their quarter Sessions, or at their Gaile deliuery, and that the law hath either condemned or acquitted him. These Constables are called in some places Headborowes, in some places Tithingmen, and bee like to them who are called Consuls in many Townes and Villages in France. The

One or two Constables headborowes or Tithingmen

Consta-

Constables are commonly made and sworne at the Leets of the Lords, chosen thereto by the homage, and they keep that office sometime two, three, or foure yeres, more or lesse, as the parish doth agree. What Head-borough doth betoken, it is easily knowne, our language doth declare him as the head or chiefe of the borough or village: likewise Tithing man is the chiefe of the tithing. Constable seemeth to come of our old English word Kinning, which is Kinningstable, as ye would say, a man established by the King, for such things as appertaine to pleas of the Crowne, and conseruation of the Kings peace, and as I said at the first, were in some more reputation, approching to that authoritie, which the Iustices of peace now do hold.

Kinningstable is Regia virgula, the Kings rod or wand, signifying the Kings power or authoritie, a representation whereof is the vse of maces and white staues by officers in the Commonwealth.

## Cahp. XXVI.

### Of the Sessions of gaole deliuerie, and the definitiue proceedings in causes criminall.

How theeues and murtherers and other malefactors against the Crowne and peace, are taken and brought into hold to answere to iustice, partly by hue and cry, partly by information, and partly by the diligence of the Iustices of peace and the Constables: and how at the quarter Sessions they be indicted, or els by the Coroners ye haue heard before. Enditemēt (as ye may perceiue by that which is also gone before) is but a former iudgement of twelue men which be called enquirers, and no definitiue sentence, but that which in Latine is called *Præiudicium*, it doth but shew what opinion the country hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be indicted, yet if when he come to the arrainement, there be no man to pursue further, nor no euidēce of witnesse or other triall and indices against him, he is with-

out difficultie acquitted. No man that is once indicted can be deliuered without arraignement: For as twelue haue giuen a preiudice against him, so twelue againe muſt acquit or condemne him. But if the priſoner be not indicted, but ſent to priſon vpon ſome ſuſpition or ſuſpitious behauiour, and none doe purſue him to the iudgement, firſt being proclamed thus, A. B. priſoner ſtandeth heere at the barre, if any man can ſay any thing againſt him, let him now ſpeake, for the priſoner ſtandeth at his deliuerance: If no man doe then come, hee is deliuered without any further proceſſe or trouble, agreeing firſt with the gaylor for his fees. And theſe be called acquitted by proclamation. Twice in euery yeere, the one is commonly in Lent what time there is vacation from pleading in Weſtminſter Hall, the other is in the vacation in Summer, the Prince doth ſend downe into euery ſhire of England certaine of his Iudges of Weſtminſter Hall, and ſome Sergeants at the law with cõmiſſion to heare and determine ioyntly with the Iuſtices of the peace all matters criminal, & all priſoners which be in the gaoles. Theſe Iudges do go frõ ſhire to ſhire till they haue done their circuit of ſo many ſhires as be appointed to them for that yeere: at the end of the terme going before their circuit, it is written and ſet vp in Weſtminſter Hall on what day and in what place they will be. That day there meeteth all the Iuſtices of the peace of that ſhire, the Sherife of that ſhire, who for that time beareth their charges, and asketh after allowance for it in the Exthequer.

The Sherife hath ready for criminall cauſes (as I writ before at the Seſſions of inquirie) foure, fiue, or ſixe enqueſts readie warned to appeare that day to ſerue the Prince, and ſo many more as he is commanded to haue ready to go in ciuill matters betwixt priuate men, which they call niſi prius, becauſe that word is in the writ.

In the Townes houſe, or in ſome open or common

place, there is a tribunall or a place of iudgement, made aloft vpon the highest bench, there sitteth the Iudges, which be sent downe in commission, in the middest. Next them on each side sit the Iustices of peace, according to their degree. On a lower bench before them, the rest of the Iustices of peace, and some other gentlemen, or their Clarkes. Before these Iudges and Iustices there is a Table set beneath, at which sitteth the Custos Rotulorum, or keeper of writs, Thescheto, the vnder sherife, and such Clarkes as doe write. At the end of that Table there is a barre made with a space for the enquests, and twelue men to come in when they are called, behind that space another barre, and there stand the prisoners which be brought thither by the Gayler, all chayned one to another. Then the Cryer cryeth, and commandeth silence. One of the Iudges briefely telleth the cause of their comming, and giueth a good lesson vnto the people. Then the prisoners are called for by name, and bidden to answere to their names. And when the Custos Rotulorum hath brought forth their endictments, the Iudges doe name one or two, or three of the prisoners that are endicted, whom they will haue arraigned. There the Clarke speaketh first to one of the prisoners: A. B. come to the Barre, hold vp thy hand. The Clarke goeth on: A. B. thou by the name of A.B. of such a Towne, in such a County, art endicted, that such a day, in such a place, thou hast stolne with force and armes an horse, which was such ones, of such colour, to such a valour, and carried him away feloniously, and contrary to the peace of our soueraigne Lord the King. What sayest thou to it, art thou guiltie or not guiltie? If he will not answere, or not answere directly guiltie or not guiltie, after he hath beene once or twice so interrogated, he is iudged mute, that is, dumbe by contumacie, and his condemnation is to be prested to death, which is one of the cruellest deathes that may bee: he is

laid vpon a table, and another vpon him, and so much waight of stones or leade laid vpon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth chuse, for being not condemned for felony, his blood is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be forejudged, that is, condemned for a felon by the law. If he confesse the inditement to be true, then when he is arraigned, no twelue men go vpon him, there resteth but the Judges sentence of the paine of death.

If he plead not guiltie, as commonly all theeues, robbers and murtherers do, though they haue confessed the fact before the Justice of the peace that examined them, though they be taken with the manner, which in Latine they call in flagranti crimine, howsoeuer it be, if he plead there not guiltie, the Clarke asketh him how he will bee tried, and telleth him he must say, by God and the countrie, for these be the words formall of his triall after inditement, and where the Prince is partie: if the prisoner say so, I will be tried by God and the Countrie, then the Clarke replieth, Thou hast bene indited of such a crime &c. Thou hast pleaded not guiltie, being asked how thou wilt be tried, thou hast answered by God and by the Countrie. Lo these honest men that be come heere, be in the place and stead of the Countrie: and if thou hast any thing to say to any of them, looke vpon them wel and now speake, for thou standest vpon thy life and death. Then calleth he in the first Juror. B. C. come to the Booke, and so hee giueth him an oath to goe vprightly betwixt the Prince and the prisoner, &c. If the prisoner obiecteth nothing against him, he calleth another, and so another, till there be twelue or aboue: and for the most part the prisoner can say nothing against them, for they are chosen

but

but for that day, and are vnknowne to him, nor they know not him, as I said, being substantiall Yeomen that dwell about the place, or at least in the hundred, or neere where the felony is supposed to bee committed, men acquainted with daily labour and trauell, and not with such idle persons as be readie to do such mischiefes.

When the enquest is full, and the prisoner hath obiected nothing against them, as indeed seldome hee doth, for the cause aboue rehearsed: The Clarke saith to the Crier, counte, (in French as ye would say reckon) and so nameth all those that be on the quest. The Cryer at euery name crieth aloud, one, then two, three, foure and so till the number be full of twelue or more, and then saith good men and true: and then saith aloud: If any can giue euidence, or can say any thing against the prisoner, let him come now, for he standeth vpon his deliuerance. If no man come in, then the Iudge asketh who sent him to prison, who is commonly one of the Iustices of peace: he (if he be there) deliuereth vp the examination which hee tooke of him, and vnderneath the names of those whom he hath bound to giue euidence: although the malefactor hath confessed the crime to the Iustice of the peace, and that it appeare by his hand and confirmation, the twelue men will acquit the prisoner, but they which should giue euidence pay their recognizance. Howbeit this doth seldome chance, except it be in small matters, and where the Iustice of peace who sent the prisoner to the gaole is away. If they which be bound to giue euidence come in, first is read the examination, which the Iustice of peace doth giue in, then is heard (if hee be there) the man robbed what he can say, being first sworne to say the truth, and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say any thing, being sworne one after another to say truth. These be set in such a place as they may see the Iudges and the

Iustices, the enquest and the prisoner, and heare the, and be heard of them all. The Iudge after they be sworne, asketh first the partie robbed, if he know the prisoner, and biddeth him looke vpon him: hee saith yea, the prisoner sometime saith nay. The partie pursuant giueth good ensignes, *verbi gratia*, I know thee well enough, thou robbedst me in such a place, thou beatedst me, thou tookest my horse from me, and my purse, thou hadst then such a coate, and such a man in thy company: The theefe will say no, and so they stand a while in altercation, then hee telleth all that he can say: after him likewise al those who were at the apprehension of the prisoner, or who can giue any *indices* or tokens, which we call in our language euidence against the malefactour. When the Iudge hath heard them say enough, hee asketh if they can say any more. If they say no, then hee turneth his speech to the enquest. Good men (saith he) ye of the enquest, ye haue heard what these men say against the prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your oath, & to your duty, & do that which God shal put in your minds to the discharge of your consciences, and marke well what is said. Thus sometime with one enquest is passed to the number of two or three prisoners. For if they should be charged with more, the enquest will say, my Lord, we pray you charge vs with no more, it is enough for our memory. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them but inditement, the Clarke repeating to them the effect of it, and shewing more, that if they find him guilty, they shal enquire what goods, lands, and tenements the said person had at the time of the felony committed: and if they find any, they shall bring it in: if none, they shall say so. If they find him not guilty, they shall enquire whether he fled for the felony or no.

And there is a Baillife to waite vpon them, and to see that

that no man do speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is said, or would heare againe some of them that giue euidence, to interrogate them more at full; or if any that can giue euidence came late: it is permitted that any that is sworne to say the truth may be interrogated of them to enforme their consciences. This is to be vnderstood, although it will seeme strange to all nations, that do vse the ciuill Law of the Romane Emperours, that for life and death there is nothing put in writing but the enditement only. All the rest is done openly in the presence of the Iudges, the Iustices, the enquest, the prisoner, and so many as will or can come so neere as to heare it, and all depositions and witnesses giuen aloud, that all men may heare from the mouth of the deponents and witnesses what is said. As of this, so is it of all other prisoners after the same sort. By that time that the enquests for the prisoners bee dispatched, it is commonly dinner time, the Iudges and Iustices go to dinner, and after dinner do returne to the same place: if the enquest be not readie for the prisoners, they go to some other enquests of *Nisi prius*, which bee ciuill matters and priuate, to driue out the time. The enquests haue no sooner agreed vpon their charge one way or other, but they tell the Waylife, and pray to be heard, and considering that they be by themselues, all this while as prisoners, as I said before, it is no meruaile though they make expedition. The prisoners be sent for againe to the Barre, the enquest which hath agreed, is called for, each one of the Iurie by his name, to which hee answereth. Then the Clarke asketh if they be agreed, and who shall speake for them, one or more saith yea, hee that speaketh for them all is called the foreman, and commonly it is hee that is first sworne: then the prisoner is

bidden

bidden to hold vp his hand. The Clarke saith vnto him: Thou art indicted by the name of A. of such a place, &c. being thereof arraigned thou pleadest thereto not guilty, being asked how thou wouldst be tried, thou saidst by God and thy Countrie. These honest men were giuen to thee by God and thy Prince for thy Countrie: Hearken what they say. Then hee asketh of the enquest, what say you? Is he guiltie or not guiltie? The fore-man maketh answere in one word, guiltie, or in two, not guiltie: the one is deadly, the other acquitteth the prisoner. So that neither Judge nor Justice hath to doe, or can reuerse, alter and change the matter if they say guiltie. The Clark asketh what lands, tenements, or goods the prisoner had at the time of the felony committed, or at any time after. Commonly it is answered, that they know not, nor it shall not greatly need, for the Sherife is diligent enough to enquire of that for the Princes and his owne aduantage, and so is the Escheator also.

Of him whom the twelue men pronounce guiltie, the Judge asketh what he can say for himselfe, if he can reade, he demandeth his Clergie. For in many felonies, as in theft of Oxen, Sharpe, Poney or other such things, which be no open robberies by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Law, that for the first fault the felon shall be admitted to his Clergy, for which purpose, the Bishop must send one with authoritie vnder his seale to bee Judge in that matter at euery gayle deliuery. If the condemned man demandeth to bee admitted to his booke, the Judge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth so well, as he can (God knoweth sometime very slenderly:) then he asketh of the Bishops Commissarie, *legit vt clericus*? The Commissarie must say *legit* or *non legit*, for these be the words formall, and our men of law be verie

precise

precise in their words formall. If he say *legit*, the Iudge proceedeth no further to sentence of death: if he say *non*, the Iudge forthwith, or the next day proceedeth to sentence, which is done by word of mouth onely. Thou A. hast béene indicted of such a felony, and therefore arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrey, they haue found thée guilty, thou hast nothing to say for thy selfe, Law is, thou shalt returne to the place from whence thou camest, from thence thou shalt go to the place of execution, there thou shalt hange till thou be dead. Then he saith to the Sherife, Sherife doe execution: he that claimeth his Cleargie, is burned forthwith in the presence of the Iudges, in the brawne of his hand with a hot yron, marked with the letter T. for a thiefe, or M. for a man-slayer, in cases where Cleargie is admitted, and is deliuered to the Bishops officer to be kept in the Bishops prison, from whence after a certaine time by another enquest of Clarkes he is deliuered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guiltie, is acquitted forthwith, and discharged of prison, paying the Iaylers fées, and if he know any priuate man who purchased his indictment, and is able to pursue it, he may haue an action of conspiracy against him, and a large amends: but that case chanceth seldome.

## Chap. XXVII.

### Certaine orders peculiar to England, touching punishments of malefactors.

For any felony, man-slaughter, robbery, murther, rape and such capitall crimes, as touch not treason and *laesam maiestatem*, we haue by the Law of England no other punishment but to hang till they be dead: when they be

dead, euery man may bury them that will, as commonly they be. Heading, tormenting, dismembring either arme or legge, breaking vpon the wheele, empailing, and such cruel torments, as be vsed in other Nations by the order of the law, wee haue not: and yet as few murthers committed as any where: nor it is not in the Iudges, or the Iustices power, to aggrauate or mittigate the punishment of the Law, but in the Prince onely, and his priuy Counsell, which is maruailous seldome done. Yet notable murtherers many times by the Princes commaundement after they bee hanged with corde till they bee drad, bee hanged with chaines while they rot in the aire.

If the wife kill her husband, she shal be burned aliue. If the seruant kill the Maister, hee shall bee drawne on a hurdle to the place of execution: it is called petit treason. Impoysoners, if the person die thereof, by a new Law made in King Henrie the eights time, shall bee boyled to the death: but this mischiefe is rare, and almost vnknowne in England. Attempting to impoyson a man, or laying a waite to kill a man, though he wound him dangerously, yet if death follow not, it is no felony by the Law of England, for the Prince hath left no man, and life ought to bee giuen wee say, but for life onely.

And again, when a man is murdered all be principals & shall die, euen he that doth but hold the candle to giue light to the murtherers. For mitigation and moderation of paines, is but corruption of Iudges, as we thinke. Likewise, torment or question, which is vsed by the order of the ciuill law, and custome of other Countries, to put a malefactor to excessiue paine, to make him confesse of himselfe, or of his fellowes, or complices, it is not vsed in England, it is taken for seruile. For how can he serue the Common-wealth after as a free-man who hath his

body

bodie so haled or tormented, if he bee not found guilty, and what amends can be made him? And if he must die, what crueltie is it so to torment him before? Like wise, confession by torment is esteemed for nothing, for if hee confesse at the indgement, the triall of the 12. goeth not vpon him: if he denie the fact: that which he said before hindreth him not. The nature of English-men is to neglect death, to abide no torment: And therefore hee will confesse rather to haue done any thing, yea to haue killed his owne father than to suffer torment: for death our Nation doth not so much esteeme as a meare torment. In no place shall you see malefactors goe more constantly, more assuredly, and with lesse lamentation to their death than in England.

Againe, the people not accustomed to see such cruell torments, will pittie the person tormented, and abhorre the Prince and the Judges, who shold bring in such cruelty amongst them, and the twelue men the rather absolue him. There is an old law of England, that if any Jayler shall put any prisoner being in his custody to any tormen, to the intent to make him an approuer, that is to say, an accuser, or Iudex of his complices, the Jayler shall die therfore as a felon, And to say the truth, to what purpose is it to vse torment? For whether the malefactor confesse or no, and whatsoeuer hee saith, if the enquest of twelue doe find him guiltie, hee dieth therefore without delay. And the malefactor seeing there is no remedy and that they be his Countrimen, and such as hee hath himselfe agreed vnto, if they do find him worthy death yeelds for the most part vnto it, and doth not repine, but doth commodate himselfe to aske mercie of God.

The nature of our Nation is free, stout hault, prodigall of life and bloud: but contumely, beating, seruitude, and seruile torment, and punishment, it will not abide. So in this nature and fashion, our ancient Princes, and

Legislators haue nourished them as to make them stout hearted, couragious, and Souldiers, not villaines and slaues, and that is the scope almost of all our policy.

The twelue as soone as they haue giuen their verdict are dimissed to goe whether they will, and haue no manner commoditie and profit of their labour, and verdict, but onely doe seruice to the Prince and Common-wealth.

## Chap. XXVIII.

### Of treason, and the triall which is vsed for the higher Nobilitie and Barons.

THe same order touching triall by enquest of twelue men is taken in treason, but the paine is more cruel. First to be hanged, taken downe aliue, his bowels taken out, and burned before his face, then to bee beheaded, and quartered, and those set vp in diuers places. If any Duke, Parques, or any other of the degrées of a Baron, or aboue, Lord of the Parliament be appeached of treason, or any other capitall crime, he is iudged by his Péeres and equals: that is, the yeomanrie doth not goe vpon him, but an enquest of the Lords of the Parliament, and they giue their voyce, not one for all, but each seuerally as they doe in Parliament, beginning at the youngest Lord. And for Iudge one Lord sitteth, who is Constable of England for that day. The iudgement once giuen, he breaketh his staffe, and abdicateth his office. In the rest there is no difference from that aboue written.

THE

# THE THIRD BOOKE.

## Chap. I.

Of that which in other Countries is called Appellation, or Prouocation, to amend the iudgement of ſentence definitiue, which is thought vniuſtly giuen in cauſes Criminall.

IF the enqueſt of twelue men do ſeeme to the Iudges, & the Iuſtices to haue gon too violently againſt the euidence giuen in matters criminal, either it is, that vpon ſlender euidence they haue pronounced him guiltie, whom the Iudges and moſt part of the Iuſtices thinke by the euidence not fully proued guiltie, or for ſome other cauſe, do thinke the perſon rather worthy to liue than to die. The enqueſt is neuertheleſſe diſmiſſed: but when the iudges ſhould pronounce the ſentence of death vpon the perſon found guilty, he wil defer it, which is called, to repriue the priſoner, (that is to ſay, to ſend him againe to priſon) and ſo declare the matter to the Prince, & obtaineth after a time for the priſoner his pardon: and as for prouocation or appeale, which is vſed ſo much in other countries, it hath no place in England after ſentence giuen by the twelue, whereby the perſon is found guiltie or not guiltie: but, without that repriuing, the ſentence is ſtraight put in execution by the Sherife.

And if they either escape, or die another death, the Sherife escapeth not to pay a great fine and ransome at the Princes mercie: if hauing pregnant euidence, neuertheless, the twelue doe acquite the malefactor, which they will doe sometime, and especially if they perceiue either one of the Iustices or of the Iudges, or some other man to pursue too much, and too malitiously the death of the prisoner, and do suspect some subornation of the witnes, or of them which doe giue euidence, and sometime if they perceiue the Iudge would haue the prisoner escape, and in repeating the euidence doe giue them thereof some watch-word. But if they doe (as I haue said) pronounce not guiltie vpon the prisoner, against whome manifest witnesse is brought in, the prisoner escapeth: but the twelue not only rebuked by the Iudges, but also threatned of punishment: and many times commanded to appeare in the Starre chamber, or before the priuie Counsell for the matter. But this threatning chanceth oftner then the execution thereof, and the twelue answere with most gentle wordes, they did it according to their consciences, and pray the Iudges to be good vnto them, they did as they thought right and as they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the King now) that an enquest for pronouncing one guiltie of treason contrarie to such euidence as was brought in, were not onely imprisoned for a space, but a huge fine set vpon their heades, which they were faine to pay: An other enquest for acquiting another, beside paying a fine of money, put to open ignominie and shame. But those doings were euen then of many accounted very violent, tyrannical, and contrary to the libertie & custome of the Realme of England. Wherefore it commeth very seldome in vse, yet so much at a time the enquest may be corrupted, that the Prince may haue cause with iustice to punish them: For they are

men

men, and ſubiect to corruption and partiality, as others bee.

## Cahp. II.

### What remedie is, if the ſentence bee thought vniuſtly giuen.

IN cauſes ciuill there is another order: for if after the matter bee pleaded to the iſſue, and the twelue men thereupon impaneled, the euidence brought and pleaded before them on both parties, the twelue ſeeme to be partial, and to haue giuen ſentence contrary to the euidence ſhewed vnto them the partie greeued may bring againſt them; and the party for whom the ſentence is giuen, a writ of attaint: and whereas before vpon the firſt queſt commonly they ſhall be Yeomen, now vpon this attaint muſt go foure and twentie Gentlemen dwelling within the ſhire, and twelue at the leaſt of the hundreth where the land lieth. The matter is pleaded againe before the ſame Iudges. The party defendant is not onely now he who claimeth the land, but alſo all and euery of the Yeomen, who by their verdict did giue it him.

There muſt in the attaint no more euidence bee brought in, but onely that which was brought in and alledged before the firſt enqueſt. And if this ſecond enqueſt of foure and twentie Gentlemen do adiudge as the firſt did, the plaintife ſhal not only loſe the land, but alſo pay a fine to the Prince, and damages to the partie. If this ſecond enqueſt doe find that the firſt enqueſt haue gone partially, and againſt the euidence brought in before them, the firſt Enqueſt is called attainted, and accounted as periured and infamed. The Prince had before, the waſte of all landes and poſſeſſions with other puniſhments, which at this preſent by a law made by Parliament in the time of King Henry the eight is aboliſhed, and now by that law or act of Parliament, beſide other

puniſh-

punishment, each of the quest attainted payeth vnto the Prince a partie, fiue pound, if it be vnder forty pounds: and if aboue, then twentie pounds. Attaints be very seldome put in vre, partly because the Gentlemen will not meete to slaunder and deface the honest Yeomen their neighbours: so that of a long time, they had rather pay a meane fine then to appeare and make the enquest. And in the meane time they will intreat so much as in them lyeth the parties to come to some composition and agreement among themselues, as lightly they do, except either the corruption of the enquest be too euident, or the one partie is too obstinate and head-strong. And if the Gentlemen doe appeare, gladlier they will confirme the first sentence, for the causes which I haue said, then go against it. But if the corruption be too much euident, they will not sticke to attaint the first enquest: yet after the Gentlemen haue attainted the Yeomen, if before the sentence be giuen by the Iudge (which ordinarily for a time is deferred) the parties be agréed, or one of them be dead, the attaint ceaseth.

If at any time before the sentence be giuen or put in execution, there be found some such error in the writ, in the processe, or forme (as our lawyers be very precise and curious of their formes) that it may be reuocable, it is brought a fresh to the disputation by a writ of error, and all that is done reuersed, but that is common to all other Countries, where the ciuill law is vsed, which they call *de nullitate processus*, and serueth both in England and in other places aswell in causes criminall, as ciuill. Other kinde of Appellation to reuoke processes, and to make them of short, long: of long infinite: which is vsed by the ciuill law, we haue not in our common law of England. By supplication to the Prince, and complaint to the Chancellour vpon supposall of losse, or lacke of euidence, or too much fauour in the Country, and power of the aduersary

nerſarie, there is in our Countrey, as well as theirs both ſtopping and prolonging of Iuſtice. For what will not buſie heads & louers of trouble, neuer being ſatiſfied, inuent in any Country to haue their deſire, which is to vexe their neighbours, and to liue alwaies in diſquiet: Men euen permitted of God like flies, and lice, and other vermine, to diſquiet them who would employ themſelues vpon better buſines and more neceſſary for the Common-wealth. Theſe men are hated, and feared of their neighbours, loued and aided of them which gaine by proceſſe, and ware fat by the expence and trouble of other. But as theſe men ordinarily ſpend their owne thrift, and make others againſt their wils to ſpend theirs: ſo ſometime being throughly knowne, they doe not only liue by the loſſe like euill huſbands, but beſide rebuke and ſhame, by the equitie of the Prince and Courts ſouereigne, they come to be extraordinarily puniſhed, both corporally, and by their purſe, which thing in my minde is as royall and princely an act, and ſo beneficiall to the Commonwealth as in ſo ſmall a matter a King or Quéene can doe, for the repoſe and good education of their ſubiects.

## Cahp. III.

### Of that which in England is called appeale, in other places accuſation.

IF any man hath killed my father, my ſonne, my wife, my brother or next kinſman, I haue choice to cauſe him to be indited, giuing information to the enqueſt of enquirie, (although he chance to eſcape the Conſtable or Iuſtices hands, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or elſe within a yeare and a day I may enter my appeale, that is, mine accuſations againſt him: If I began firſt to purſue him by information or denunciation to enditement

I am now no partie but the Prince, who for his dutie to God and his Common-wealth and subiects, must see iustice executed against all malefactors and offenders against the Peace, which is called Gods and his, and doth in such manner as I haue said before. If I leaue that and will appeale, which is, prosecute my accusation against him who hath done to me this iniury, the defendant hath this aduantage to put himselfe to the Iury, which is, to that which before is said to haue that issue and triall by God & his Countrey, whereof the fashion I haue at large declared: or to demand the triall by battaile, wherin both the parties must either combate in person, or else finde other for them, who be called in our law Champions, or Campions, some doe enterprete them, ἀθληταὶ, because they be men chosen, fat, lustie, fit for the seate, or as the French doe terme them Adroicts aux armes. Which shall fight it out by μονομαχία, or as now they doe call it duellum, or the Campe, which shall haue all things equall: but according as Mars giueth the victory, so the Law is iudged, the one as *peractus reus*, the other as *calumniator*, to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more dangerous and equall, for the one or the other must die.

So is it not in the grand assise, for the *reus* or defendant is onely in daunger of death. Short it is, from day to Sunne set, the quarrell is ended, or sooner, who hath the better fortune. This seemeth very militarie (as in manner all our pollicy of England) and to haue as small to do with Lawyers, as with Phisitions, quickly to dispatch, and for the rest to returne, each man to his businesse to serue the Common-wealth in his vocation. The Popes of Rome, and men of the Church, who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this kinde of

triall

triall and iudgement, as reason is euerie man misliketh that which is not like to his education, and cold reasoning by Theologie and Philosophie: they (I say) much mislike many things done necessarily in hote policy.

At the least a Commonwealth militarie must aduenture many things to kéepe it in quiet, which cannot séeme so precisely good to them which dispute thereof in the shadow and in their studies. Howsoeuer it be, this kinde of triall a long time hath not béene vsed. So that at this time we may rather séeke the experiences of it out of our Histories of time passed, then of any view or sight thereof, of them which are now aliue. Neuertheless the Law remaineth still, and is not abolished, and if it shall chance the murtherer or man-sleyer (the one we call him that lieth in waite, and as they terme it in French de guit appendant, killeth the man, the other who by casuall falling out and sodaine debate and choler doth the same which way soeuer it be done) if he that hath slain the man hath his pardon of the Prince as occasion or the fauor of the prince may so present that he may haue it, yet the partie grieued hath these two remedies, I say to require iustice by grand assise, or battle vpon his appeale & priuate reuenge, which is not denied him. And if the defendant either by great assise or battaile be cõuinced vpõ that appeale, he shall die, notwithstanding the Princes pardon. So much fauorable our Princes & the law of our realme is to iustice & to the punishment of blond violently shed.

## Cahp. IIII.
### Of the Court of Starre-chamber.

There is yet in England another Court, of the which that I can vnderstand there is not the like in any other Countrey. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and

those daies when the law is exercised in Westminster Hall, which as I haue said, is but at certaine times and Termes) euery weeke once at the least (which is commonly on Fridaies, and Wednesdaies, and the next day after that the Terme doth end) the Lord Chancellour, and the Lords, and other of the Priuie Councell, so many as will, and other Lords and Barons which be not of the priuie Councell, and be in the Towne, and the Iudges of England, specially the two chiefe Iudges, from nine of the clocke till it be eleuen, doe sit in a place which is called the Starre chamber, eyther because it is full of windowes, or because at the first all the roofe thereof was decked with Images or starres gilded. There is plaints heard of riots. Riot is called in our English terme or speech, where any number is assembled with force to do any thing: and it had the beginning, because that our men being much accustomed eyther in forraine wars in France, Scotland, or Ireland, or being ouermuch exercised with ciuill warres within the Realme (which is the fault that falleth ordinarily amongst bellicous Nations) whereby men of warre, Captaines and Souldiers become plentifull: which when they haue no externe seruice wherewith to occupie their busie heads and hands accustomed to fight and quarrell, must needs seeke quarels and contentions amongst themselues, and become so readie to oppresse right among their neighbours, as they were wont before with praise of manhood to be in resisting iniury offered by their enemies. So that our Nation vsed hereunto, and vpon that more insolent at home, and not easie to be gouerned by law and politicke order, men of power beginning many fraies, and the stronger by factions and parties offering to much iniurie to the weaker, were occasions of making good lawes. First of retainers, that no man should haue aboue a number in his Liuery or retinue, then of the enquirie of routs

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and riots at euery Sessions, and of the law whereby it is prouided that if any by force or by riot enter vpon any possessions, the Iustices of the Peace shal assemble themselues, and remoue the force, and within certaine time enquire thereof.

And further, because such things are not commonly done by the meane men, but such as be of power & force, and be not to be dealt withal of euery man, nor of meane Gentlemen: if the riot be found & certified to the kings Counsell, or if otherwise it be complained of, the party is sent for, and he must appeare in the Starre-chamber: seeing (except the presence of the King onely) as it were the maiestie of the whole Realme before him, being neuer so stout, he will be abashed: and being called to answere (as he must come of what degree soeuer he be) he shall be so charged with such grauitie, with such reason, and remonstrance, and of those chiefe personages of England, one after another handling him on that sort, that what courage soeuer he hath, his heart will fall to the ground, and so much the more, when if he make not his answere the better, as seldome he can so in open violence, he shall be commanded to the Fleet, where he shall be kept in prison in such sort as those Iudges shal appoint him, and lie there till he be wearie alwell of the restraint of his libertie, as of the great expences, which he must there sustaine, and for a time be forgotten, whiles after long suit of his friends, hee will be glad to be ordered by reason. Sometime as his deserts bee, he payeth a great fine to the Prince, besides great costs & dammages to the partie, and yet the matter wherefore he attempted this riot and violence, is remitted to the Common law. For that is the effect of the Court, to bridle such stout Noblemen, or Gentlemen which would offer wrong by force to any manner men, and cannot be content to demaund or defend the right by order of law. This Court began

long before, but tooke augmentation and authoritie at that time that Cardinall *Wolsey* Archbishop of Yorke was Chancellour of England, who of some was thought to haue first deuised that Court, because that he after some intermission by negligence of time, augmented the authoritie of it, which was at that time marueilous necessarie to do, to represse the insolencie of the Noblemen & Gentlemen of the North parts of England, who being far from the King and the seat of iustice, made almost as it were an ordinarie warre among themselues, & made their force their Law, banding themselues with their Tenants, and Seruants, to do or reuenge iniury one against another as they liked. This thing seemed not supportable to the Noble Prince Henry the eight: and sending for them one after another to his Court, to answere before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and bene well disciplined as well by words as by fleeting a while, and thereby their purse and courage somewhat asswaged they began to range themselues in order, and to vnderstand that they had a Prince who would rule his subiects by his lawes and obedience. Sith that time this Court hath bene in more estimation, and is continued to this day in manner as I haue said before.

The Iudges of this Court are the Lord Chancellour, the Lord Treasurer, all the Kings Maiesties Counsell, the Barons of this Land.

The officers therein are a Clarke, three Atturnies, an Examiner.

The Clarke keepeth the records, rules, entries, orders, and decrees, made in this Court.

The three Atturnies are for the plantife, and for the defendant to frame their complaints and answeres, and make the matter apt to be heard for the Lordes.

The Examiner taketh the depositions of the witnesses

neſſes of both ſides, to the proofe or diſproofe of the cauſe.

The order of proceeding to iudgement is by aſſent of voyces, and open yeelding their mind in Court, the maior part being preferred for ſentence.

The puniſhment moſt vſuall, is impriſonment, pillory, a fine, and many times both fine and impriſonment.

The proceſſe is a ſubpena, an attachment, a proclamation of rebellion, and a commiſſion of rebellion.

This Subpena is in manner of a libell or precept.

The Proclamation and commiſſion of rebellion ſerueth when the partie is ſtubborne, hauing made contempt, and commeth not in by the former proceſſe.

The Meſſengers of this Court are the warden of the Fleete: or the Sergeants at Armes.

The matters belonging moſt commonly, are by ſtatutes, as is taking away of maids within age againſt parents or guardians will. See Anno. 4. & 5. Phil. & Mariæ. cap. 8. All notable forgeries, counterfetting letters, or priuie tokens. See Hen. Anno. 33. cap. 1. An. 5. Eliz. cap. 11. ſlandering of Nobles, and ſeditious newes. See R. 2. Anno. 2. cap. 5. Anno. 1. & 2. Phil. & Mariæ. cap. 2. Anno. 2. 3. Eliz. cap. 7. All notable riots and vnlawfull aſſemblies. See Anno. 1. Eliz. cap. 17. And all the titles of Ryots in Raſtals Abridgement, all notable deceits, and all kind of couſenage. &c.

## Chap V.

### Of the Courts of Wards and Liueries

He whom we call a Ward in England, is called in Latine *pupillus*, and in Greeke ὀρφανος. The Gardian is called in Latine *tutor*, in Greeke ἐπίτροπος. A ward or Infant is taken for a child in baſe age, whoſe Father is dead. The Romans made two diſtinctions, *pupillum & minorem*, the one fourteene yeare old, the other was ac-

accounted from theree to fiue and twentie. And as *pupillus* had *tutorem*, so *minor* had *curatorem*, till he came to the age of fiue and twentie. These Tutors or Curators were accoũtable for the reuenues of the pupils, & minors lands, and great prouiſion, and many lawes and orders be made for them in the bookes of the Ciuill Law, for rendring iuſt and true accounts. So that to be a gardian or tutor was accounted among them to be a charge or trouble, a thing ſubiect to much encumbrance and ſmall profit, ſo that diuers meanes were ſought for, to excuſe men from it. With vs this is cleane contrary, for it is reckoned a profit to haue a Ward. For the Lord of whom the Ward doth hold the land, ſo ſoone as by the death of the Father the child falleth Ward vnto him, he ſeaſeth vpon the bodie of the Ward, and his landes, of which (ſo that he doth nourith the Ward) he taketh the profits without accounts. And beſide that offering to his Ward conenable marriage without diſparagement before the age of one and twentie yeares if it be a man, of fourteene if it be a woman. If the ward refuſe to take that marriage, hee or ſhee muſt pay the value of the marriage, which is commonly rated according to the profit of his lands. All this while I ſpeake of that which is called in French garde noble, that is, of ſuch as hold lands of others by Knights ſeruice, for that is another kinde of ſeruice, which we call in French gard roturier, we call it gard in ſocage, that is of ſuch as do not holde by Knights ſeruice, but by tenure of the plough. This Wardſhip falleth to him who is next of the kinne, and cannot inherite the Land of the Ward, as the Vncle by the mothers ſide, if the Land doe diſcend by the Father, and of the fathers ſide, if the land diſcend by the mother. This Gardian is accountable for the reuenues, and profits of the Land, as the tutor by the ciuill Law to the Ward or Pupill ſo ſoone as he is full of age.

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The man is not out of Wardſhip by our Law till one and twentie yeare old, from thence he is reckoned of full age, as well as in the Roman lawes at fiue and twentie. The woman at fourteene is out of Ward, for ſhe may haue a huſband able to doe the Knights ſeruice, ſay our Bookes. And becauſe our wiues be in the power (as I ſhall tell you hereafter) of their huſbands, it is no reaſon ſhe ſhould be in two diuers guards.

Many men doe eſteeme this wardſhip by Knights ſeruice very vnreaſonable and vniuſt, and contrarie to nature, that a freeman and Gentleman ſhould be bought and ſold like an Horſe or an Oxe, and ſo change Gardians as Packers and Lords: at whoſe gouernment not onely his bodie but his lands and his houſes ſhould be, to be waſted and ſpent without accounts, and then to marrie at the will of him, who is his naturall Lord, or his will who hath brought him to ſuch as he likes not peraduenture, or elſe to pay ſo great a ranſome. This is the occaſion they ſay, why many Gentlemen be ſo euill brought vp touching vertue and learning, and but onely in daintineſſe and in pleaſure: and why they be married very young, and before they be wiſe, and many times do not greatly loue their wiues. For when the Father is dead, who hath the naturall care of his child? not the Mother, nor the Vncle, nor the next of kinne, who by all reaſon would haue moſt naturall care for the bringing vp of the infant and *minor*, but the Lord of whom hee holdeth his Land in Knights ſeruice, bee it the King or Queene, Duke, Marqueſſe, or any other, hath the gouernment of his bodie, and marriage, or elſe who that bought him at the firſt, ſecond, or third hand. The Prince as hauing ſo many, muſt needes giue or ſell his Wardes away to other, and ſo hee doth. Other doe but ſeeke which way they may make moſt aduantage of him, as of an Oxe, or other Beaſt. Theſe all (ſay they) haue no

naturall care of the Infant, but of their owne gaine, and especially the buyer will not suffer his ward to take any great paines, either in studie or any other hardnesse, least he should be sicke and die, before he hath married his daughter, sister, or cousen, for whose sake he bought him, and then all his money which he paid for him should be lost. So he who had a Father which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardship, woods decayed, houses fallen downe, stocke wasted and gone, Lands lent forth, and plowed to the barren, and to make amends, shall pay yet one yeares rent, for reliefe, and sue ouster le maine, beside other charges, so that not of many yeares, and peraduenture neuer he shall be able to recouer, and come to the estate where his Father left it. This as it is thought was first granted vpon a great extremitie to K. Henry the third for a time vpon the warre which he had with the Barons, and afterward increased, and multiplied to more and more persons & grieuances, and will be the decay of the nobilitie and libertie of England. Other againe say, the ward hath no wrong, for either his father purchased the Land, or it did not discend vnto him from his ancestors with his charge. And because he holdeth by Knights seruice, which is in armes and defence, seeing that by age he cannot do that whereto he is bound by the Land, it is reason he answere that profit to the Lord, whereby he may haue as able a man to do the seruice. The first knights in Rome, those that were chosen *equites Romani* had *equum publicum*, on which they serued, and that was at the charge of the Widowes and wards as appeareth by Titus Liuius, because that those persons could not doe bodily seruice to the Common-wealth. Wherefore this is no new thing, but thought reasonable in that most wise commonwealth, and to the prudent King Seruius Tullius. As for the education of our com-

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mon-wealth, it was at the first militarie, and almost in all things the scope and deseigne thereof is militarie. Yet was it thought most like, that Noblemen, good Knights, and great Captaines, would bring vp their wards in their owne feats and vertues, and then marry them into like race and stocke, where they may find and make friends. Who can better looke to the education, or hath better skill of the bringing vp of a Gentleman, than he who for his higher Nobilitie hath such a one to hold of him by Knights seruice, or would doe it better then hee that looketh or may claime such seruice of his Ward, when age and yeares will make him able to doe. That which is said that this manner of Wardship began in the time of King Henrie the third, cannot seeme true. For in Normandie and other places of France the same order is.

And that Statute made in King Henry the thirds time touching Wards, to him that will weigh it well, may seeme rather a qualification of that matter, and an argument that the fashion of Wardship was long before: but of this matter an other time shall be more conuenient to dispute. This may suffice to declare the manner of it.

The Iudge in this Court is the Maister of the Wards.

Officers are the Atturney of the Wardes for the King.

The Surueyor, the Auditor, the Treasurer, the Clark, two common Atturnies, inferiour Officers, also Messengers, and Pursuiuants.

The Atturney for the Wardes is alwaies for the Kinges right, and assistant with the Maister of the Wards.

The Surueyor is he that hath the allowing of euerie Liuerie that is sued out.

The Auditor taketh the account, and cauſeth proces to be made.

The Treaſurer receiueth the money due to his Maieſtie.

The Clarke is writer of the Records, and writer of the decrées, proceſſes, and orders of the Court.

The matters of this Court are all benefits that may come vnto his Maieſtie, by guard, by marriage, preuenter ſeaſon, and reliefe.

The generall proceſſe in this Court is a commiſſion, a proceſſe in manner of a proclamation, warning the partie or parties to appeare before the maſter of the wards. More ſpeciall proceſſe belonging to this Court, are a Diem clauſit extremum, a Deuenerunt, a melius inquirendum, a Datum eſt nobis intelligi, a Quæ Plura. Of the nature of theſe, ſee Stamfords booke of the Kings prerogatiue.

Out of this Court are the Liueries ſued, and committed to the Clarkes of the Pettie bagge, officers in the Chauncery.

When the heire hath proued his age, and ſued his Liuery, then he muſt doe homage to [illegible] that is the Deputie of the Prince for that purpoſe, and then muſt pay a fine or fee to the Lord Prince Seale.

## CHAP. VII.

### The Dutchie Court.

THe Dutchie Court of Lancaſter is alſo the Kings Court of Record. In it are holden all pleas real and perſonall, which concerne any of the Dutchie lands, now in his Maieſties hands and parcell of the Crowne: but ſerued in Court and iuriſdiction.

The Iudge in this Court is the Chauncellor, aſſiſted by the Attourney of the Dutchie for the King, the Clarke

Clarke of the Court, diuers Surueyors, two common Atturnies, diuers Auditors, two assistants, the Sergeant of his Maiestie.

The Chancellour is a Iudge of the Court, to see Iustice administred betweene his Maiestie and his Subiects, and betweene partie and partie.

The Attourney is to maintaine the Kings, and is assistant to the Chauncellour, and sheweth him what the law is.

The Clarke keepeth the Rolls and Records, and maketh the Processe.

The Surueyors are diuers: one more principall: they suruey the Kings land within the Dutchie.

The Auditors are diuers: one more principall: they are to account and make the order of the receites within the Dutchie.

The common Atturneies are for the suitors that haue cause in action within the Court.

The assistants are two Iudges at the Common law that are to aide them in difficult points of law.

The Sergeant for the King, is a learned Counsailour, appointed to bee of his Maiesties Counsell for his right.

There is also belonging to this Court a Vicechauncelour, that serueth for the County Palatine of Lancaster, he maketh all originall processes within his liberty, as doth the Lord Chancellour of England for the Chauncerie.

The Processe of the Countie Palatine, is a *Sub pœna*, as in the Chauncerie.

## Cahp. VII.
### The Court of Requeſts.

This Court is the Court wherein all ſuites made to his Maieſtie by way of ſupplication or petition are heard and ended, neither ſhould it hold plea of any matters then ſuch. And this is called the poore mans Court, becauſe there he ſhould haue right without paying any money: and it is called alſo the Court of Conſcience.

The Iudges in this Court are the Maiſters of Requeſts, one for the common lawes, the other for the ciuill lawes.

The officers in this Court, are the Regiſter, the Examiner, three Atturnies, one Meſſenger or Purſuiuant.

The Examiner is he that opposeth the witneſſes by oath, and recordeth their depoſitions.

The Atturnies ſerue for the plantife and defendant to frame their complaints and anſweres.

The Purſuiuant is an officer in this Court, to bring any man before the Iudges whom they ſhall name.

The matters in this Court at this day, are almoſt all ſuites that by colour of equitie or ſupplication made to the Prince, may be brought before them: properly all poore mens ſuites, with are made to his Maieſtie by ſupplication.

The Proceſſes in this Court, are a priuie ſeale, proclamation of rebellion.

The nature of theſe Proceſſes is, as was ſaid before in the Court of Starre-chamber.

Chap.

## Chap. VIII.
### Of Wiues and Marriages.

THe wiues in England be as I ſaid *in poteſtate maritorum*, not that the huſband hath *vitæ ac necis poteſtatem*, as the Romans had in the old time, of their children, for that is onely in the power of the Prince, and his lawes, as I haue ſaid before, but that whatſoeuer they haue before marriage, as ſone as marriage is ſolemnized is their huſbands, I meane of money, plate iewels, cattaile, and generally all moueabls. For as for land and heritage followeth the ſucceſſion, & is ordered by the law, as I ſhall ſay hereafter: and whatſoeuer they get after marriage, they get to their huſbands. They neither can giue nor ſell any thing eyther of their huſbands or their owne. There is no moueable thing is by the law of England *conſtante matrimonio*, but as *peculium ſerui aut filii familias*, and yet in moueables at the death of her huſband ſhe can claime nothing, but according as hee ſhall will by his Teſtament, no more then his ſonne can: all the reſt is in the diſpoſition of the executors, if he die teſtate. Yet in London and other great Cities they haue that law and cuſtome, that when a man dieth, his goods be deuided into three parts. One third part is imployed vpon the buriall and the bequeſts, wich the Teſtator maketh in his Teſtament. Another third part the wife hath as her right, and the third part is the due and right of his children, equally to be deuided among them. So that a man there can make Teſtament but of one third of his goods: If he die inteſtate, the funerals deducted, the goods be equally deuided betweene the wife and the children.

By the common law of England if a man die inteſtate, the Ordinarie (which is the Biſhop by common intendment) ſometime the Archdeacon, Deane, or Prebendarie,

dary, by priuiledge and prescription, doth committ the administration of the goods to the Widow or the child, or next kinsman of the dead, appointing out portiõs to such as naturally it belongeth vnto, & the Ordinary by common vnderstanding, hath such grauity & discretion as shal be fit for so absolute an authoritie for the most part, following such diuision as is vsed in London, either by thirds or halues. Our forefathers newly conuerted to the Christian faith, had such confidence in their Pastors and instructors, & toke them to be men of such conscience that they committed that matter to their discretion: and belike at the first were such as would seeke no priuate profit to themselues thereby: that being once ordained hath still so continued. The abuse which hath followed was in part redressed by certaine acts of Parliament made in the time of King Henry the eight, touching the probate of Testaments, committing of administration, and mortuaries. But to turne to the matter which we now haue in hand, the wife is so much in the power of her husband, that not onely her goods by marriage are straight made her husbands, & she loseth all her administration which she had of them: but also where all Englishmen haue name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the Font, the surname is the name of the Gentilitie and stocke which the Sonne doth take of the Father alwaies, as the old Romans did, our Daughters so soone as they be married lose the surname of their Father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted frõ their family into another. So that if any wife was called before Philip Wilford by her owne name and her Fathers surname, so soone as she is married to me, she is no more called Philip Wilford, but Philip Smith, and so must she write and signe: and as she changeth husbands, so

she

ſhe changeth ſurnames, called alwaies by the ſurname of her laſt huſband. Yet if a woman once marrie a Lord or a Knight, by which occaſion ſhe is called my Ladie, with the ſurname of her huſband, if he die, and ſhe take a huſband of a meaner eſtate, by whom ſhe ſhall not be called Ladie (ſuch is the honour we do giue to women) ſhe ſhall ſtill be called Ladie with the ſurname of her firſt huſband, and not of the ſecond.

I thinke amongſt the old Romans thoſe marriages which were made *per coemptionem in manum*, and *per æs* and *libram*, made the wife *in manu & poteſtate viri*, whereof alſo we had in our old law and ceremonies of marriage, a certaine memorie as a view and *veſtigium*. For the woman at the Church doore was giuen of the Father, or ſome other man of the next of kinne into the hands of the huſband, and he laid downe gold and ſiluer for her vpon the Booke, as though he did buy her, the Prieſt belike was in ſtæde of Lipripeus: our marriages be eſtéemed perfect by the Law of England, when they be ſolemnized in the Church or Chappell, in the preſence of the Prieſt and other witneſſes. And this onely maketh both the huſband and the wife capable of all benefits which our Law doth giue vnto them and their lawfull children. Inſomuch that if I marry the Widow of one lately dead, and at the time of her huſbands death was with child, if the child be borne after marriage ſolemnized with mee, this child ſhall be my heire, and is accounted my lawfull ſonne, not his whoſe child it is indéed: ſo preciſely we do take the letter where it is ſaid, *pater eſt quem nuptiæ demonſtrant*. Thoſe waies and meanes which Iuſtinian doth declare to make baſtards to be lawfull children, muliers, or rather melieurs (for ſuch a Terme our law vſeth for them which be lawfull children) be of no effect in England: neither the Pope, nor Emperor, nor the Prince himſelfe neuer could there legitimate a baſtard

ſtard to enioy any benefit of our Law, the Parliament hath onely that power.

Although the wife be (as I haue written before) *in manu & poteſtate mariti*, by our Law, yet they be not kept ſo ſtraight as in a mew, and with a guard as they be in Italy and Spaine, but haue almoſt as much liberty as in Fraunce, and they haue for the moſt part all the charge of the houſe and houſhold (as it may appeare by Ariſtotle and Plato, the wiues of the Grekes had in their time) which is indeed the naturall occupation, exercíſe, office, and part of a wife. The husband to meddle with the defence eyther by law or force, and with all forren matters which is the naturall part and office of the man, as I haue written before. And although our Law may ſeeme ſomewhat rigorous toward the wiues: yet for the moſt part they can handle their husbands ſo well and ſo dulcely, and ſpecially when their husbands be ſicke, that where the law giueth them nothing, their husbands at their death of their good will giue them all. And few there be that be not made at the death of their husbands either ſole or chiefe executrices of his laſt wil and Teſtament, and haue for the moſt part the gouernment of the children and their portions: except it be in London, where a peculiar order is taken by the citie much after the faſhion of the ciuill Law.

It is auoydable after the husbãds death except it be for one and twentie yeares or three liues according to the ſtatute, or except they leuy a fine.

All this while I haue ſpoken onely of moueable goods. If the wife be an inheritrix and bring land with her to the marriage: that land deſcendeth to her eldeſt ſonne, or is deuided among her daughters. Alſo the manner is, that the land which the wife bringeth to the marriage, or purchaſeth afterwards, the husband cannot ſell nor alienate the ſame, no not with her conſent, nor ſhe her ſelfe during the marriage, except that ſhe be ſole examined by the Iudge at the common law: and if he haue no child by her and ſhe die, the land goeth to her next heires at the

common

common law: but if in the marriage he haue a child by her, which is heard once to crie, whether the child liue or die, the husband shall haue the vsufruit of her lands (that is the profit of them) during his life and that is called the curtesie of England.

Likewise if the husband haue any Land, either by inheritance descended, or purchased and bought, if he die before the wife, she shall haue the vsufruit of one third part of his lands. That is, she shal hold the one third part of his lands during her life as her dowry, whether he hath child by her or no. If he hath any children, the rest descendeth straight to the eldest: if he hath none, to the next heire at the common law: and if she mislike the diuision, she shall aske to be endowed of the fairest of his lands to the third part.

This which I haue written touching marriage and the right in moueables and vnmoueables which commeth thereby, is to be vnderstood by the common Law, when no priuate contract is more particularly made. If there be any priuate pacts, couenants & contracts made before the marriage betwixt the husband and the wife, by themselues, by their parents, or other friends, those haue force to be kept according to the firmitie and strength in which they are made: And this is enough of wiues and marriage.

## Chap. IX.
### Of Children.

Our children be not *in potestate parentum*, as the children of the Romanes were: but as soone as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *partes parentum*, that which is theirs they may giue or sell, and purchase to themselues eyther lands and other moueables

the Father hauing nothing to do therewith. And therfore *mancipatio* is cleane superfluous, we know not what it is. Likewise *sui haredis* complaints *de inofficioso testamento* or *præteritorum liberorum non emancipatorum*, haue no effect nor vse in our law, nor we haue no manner to make lawfull children but by marriage, and therefore wee know not what is *adoptio*, nor *arrogatio*. The Testator disposeth in his last will his moueable goods freely as he thinketh méete and conuenient without controlement of wife or children. And our testimonies for goods moueable be not subiect to the ceremonies of the ciuill law, but made with all libertie and frédome, and *iure militari*. Of lands, as ye haue vnderstood before, there is difference: For when the owner dieth, his land discendeth onely to his eldest sonne, all the rest both sonnes and daughters haue nothing by the common law, but must serue their eldest brother if they will, or make what other shift they can to liue: except that the Father in his life time doe make conueyance, and estate of part of his land to their vse, or else by deuise, which words amongst our lawyers doth betoken a Testament written, sealed and deliuered in the time of the Testator before witnesse: for without those ceremonies a bequeast of lands is not auaileable. But by the common Law, if he that dieth had no sonnes but daughters, the land is equally deuided amongst them, which by portion is made by agrément or by lot. Although (as I haue said) ordinarily and by the common Law, the eldest sonne inheriteth all the lands, yet in some Countries haue equall portion, and that is called gauelkind, and is in many places in Kent. In some places the youngest is sole heire: and in some places after another fashion. But these being but particular customes of certaine places, and out of the rule of common law, do little appertaine to the disputation of the policy of the whole Realme, & may be infinite.

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The Common-wealth is iudged by that which is moſt ordinarily and commonly done through the whole Realme.

## Chap. X.
### Of Bondage and Bondmen.

After that we haue ſpoken of all the ſorts of freemen according to the diuerſitie of their eſtates and perſons, it reſteth to ſay ſome-what of bondmen, which were called *ſerui*, which kinde of people and the diſpoſition of them and about them doth occupie the moſt of Iuſtinians Digeſtes, and Code. The Romanes had two kindes of bondmen, the one which were called *ſerui*, and they were eyther which were bought for money, taken in warre left by ſucceſſion, or purchaſed by ſome other kinde of lawfull acquiſition, or elſe borne of their bond-women, and called *vernæ*: all thoſe kind of bondmen be called in our law villains in groſſe, as ye would ſay immediatly bond to the perſon and his heires. Another they had (as appeareth in Iuſtinians time which they called *adſcripitii glebæ* or *agri cenſiti*. Theſe were not bond to the perſon, but to the Manor or place, and did follow him who had the Manors, and in our law are called villaines regardants, for becauſe they be as members, or belonging to the Manor or place. Neither of the one ſort nor of the other haue we any number in England. And of the firſt I neuer knew any in the Realme in my time. Of the ſecond, ſo few there be, that it is not almoſt worth the ſpeaking, but our law doth acknowledge them in both thoſe ſorts.

Manumiſſion of that kinde of villaines or bondmen in England, is vſed and done after diuers ſorts, and by other, and more light and eaſie meanes than is preſcribed in the ciuill Law: and being once manumitted: hee

is not libertus manumittentis, but simply liber: howbeit, since our Realme hath receiued the Christian Religion, which maketh vs all in Christ brethren, and in respect of God and Christ, conseruos, men began to haue conscience to hold in captiuitie, and such extreme bondage, him whom they must acknowledge to be their brother, and as we vse to terme him a Christian, that is, who loketh in Christ, and by Christ, to haue equall portion with them in the Gospell and saluation.

Vpon this scruple, in continuance of time, and by long succession, the holy Fathers, Monkes and Friers, in their confession, and specially in their extreame and deadly sicknesses, burdened the consciences of them whom they had vnder their hands: so that temporall men by little and little, by reason of that terror in their conscience, were glad to manumitte all their villains: but the said holy Fathers, with the Abbots and Priors, did not in like sort by theirs, for they had also conscience to empouerish and dispoile the Church so much as to manumit such as were bond to their Churches, or to the Manors which the Church had gotten, and so kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a peece of money) manumitted theirs, partly for argent, partly for slanders, that they seemed more cruell than the temporality: after the Monasteries comming into temporall mens hands, haue béene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not vsed with vs so cruelly, nor in that sort as the bondmen at the Romane ciuill law, as appeareth by their comedies: nor as in Grécce, as appeareth by theirs: but they were suffered to enioy copyhold land, to gaine and get as other seruants, that now & then their Lords might fleece them, and take a peece of money of them, as in France the Lords doe taile them whom they call

their

their Subiects, at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in France and England, the change of Religion to a more gentle, humane, and more equall sort, (as the Christian Religion, is in respect of the Gentiles,) caused this old kinde of seruile seruitude and slauerie, to be brought into that moderation, for necessitie, first to villaines regardants, and after to seruitude of landes and tenures, and by little and little finding out more ciuill and gentle meanes, and more equall to haue that done which in time of heathenesse, seruitude, or bondage did, they almost extinguished the whole. For although all persons Christiãs be brethrẽ by baptism in Iesus Christ, and therefore may appeare equally free, yet some were, and still might be Christened being bond and serue, and whom as the baptisme did finde, so it did leaue them, for it changeth not ciuill lawes nor compacts amongst men which be not contrarie to Gods lawes: but rather maintaineth them by obedience.

Which seing men of good conscience hauing that scruple wherof I wrote before haue by little and little found meanes to haue and obtaine the profite of seruitude and bondage which gentilitie did vse, and is vsed to this day among Christians on the one part, and Turks and Gentiles on the other part, when warre is betwirt them, vpon those whom they take in battaile. Turkes and Gentiles I call them, which vsing not our Law, the one beleeueth in one God, the other in many Gods, of whom they make Images. For the Law of Iewes is well enough knowne, and at this day so farre as I can learne, amongst all people Iewes be holden as it were in a common seruitude, and haue no rule nor dominion as their owne prophesies do tell, that they should not haue, after that Christ promised to them, was of them refuted: for when they would not acknowledge him, obstinately

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forsaking their helpe in soule for the life to come, and honour in this world for the time present, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophets fructified in vs which be Gentiles, and brought forth this humanity, gentlenesse, honour, and godly knowledge which is séene at this present. But to returne to the purpose.

This perswasion I say of Christians, not to make nor kéepe his brother in Christ, seruile, bond, and vnderling for euer vnto him, as a beast rather then a man, and the inhumanity which the Christian Religion doth teach, hath engendred through Realmes (not néere to Turkes and Barbarians) a doubt, a conscience, a scruple to haue seruants and bondmen, yet necessitie on both sides, of the one to haue helpe, on the other to haue seruice, hath kept a figure or fashion thereof. So that some would not haue bondmen, but adscriptitij glebæ, and villaines regardant to the ground, to the intent their seruice might be furnished, and that the Countrey being euill, vnholsome, and otherwise barren, should not be desolate. Others afterwards found out the waies & meanes, that not the men, but the Land should be bond, and bring with it such bondage and seruice to him that occupieth it, as to cary the Lords dung vnto the fields, to plow his ground at certaine daies, sow, reape, come to his Court, sweare faith vnto him, and in the end to hold the land but by copie of the Lords Court rolle, and at the will of the Lord.

The tenure is called also in our Law, villaine, bond, or seruile tenure: yet to consider more déepely, all Land euen that which is called most frée land, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water and filth which falleth from the higher ground, nor such as Iustinian speaketh of de seruitudinibus prædiorum rusticorum & vrbanorum,

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but the Land doth bring a certaine kinde of seruitude to the possessor. For no man holdeth Land simply free in England, but hee or she that holdeth the Crowne of England: all others hold their Land in fée, that is, vpon a faith or trust, and some seruice to be done to another Lord of a Manor, as his superior, and he againe of an higher Lord, till it come to the Prince, and him that holdeth the crowne.

So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is vnderstood to be holden of the Crowne, and in capite, which is much like to the Knights seruice, and draweth vnto it three seruices, Homage, Ward, and Marriage: that is, he shall sweare to be his man, and to be true vnto him of whom he holdeth the land: His sonne who holdeth the land after the death of his Father, shall be married where it pleaseth the Lord.

He that holdeth his land most freely of a temporall man (for franke almes and franke marriage hath another cause and nature) holdeth by fealtie onely, which is, he shall sweare to be true to the Lord, and do such seruice as appertaineth to the land which he holdeth of the Lord.

So that all frée land in England is holden in fee, or feodo, which is as much to say, as in fide, or fiducia, that is, in trust and confidence, that he shall be true to the Lord of whom he holdeth it, pay such rents, doe such seruice, and obserue such conditions as were annexed to the first donation. Thus all saving the Prince be not veri Domini, but rather fiduciarij domini, and possessores.

This is a more likely interpretation then that which Littleton doth put in his booke, who saith that feodum idem est quod hæreditas, which it doth betoken in no language. This happeneth many times to them who be of great wit and learning, yet not seene in many tongues, nor marke not the deduction of words which

time doth alter. Fides in Latine (the Gothes comming into Italy, and corrupting the language) was turned first into fede, and at this day in Italy they will say in fide, en fide, or a la fe. And some vncunning lawyers that would make a new barbarous Latine word, to betoken land giuen in fidem, or as the Italian saith, in fide, or fe, made it in feudum, or feodum. The nature of the word appeareth more euident in these which we call to feff, feoff, or feoffes, the one be fiduciarij possessores: or fidei commissarij: the other is, dare in fiduciam, or fidei commissum, or more latinely, fidei committere.

The same Littleton was as much deceiued in Withernam, and diuers other old words. This Withernam, as he interpreteth veritum namium, in what language I know not: whereas in truth it is in plaine Dutch, and in our old Saxon language, Wither nempt, alterum accipere, or vicissim rapere, a word that betokeneth that which in barbarous latine is called represalia, when one taking of me a distresse, which in latine is called pignus, or any other thing, and carrying it away out of the iurisdiction wherein I dwell, I take by order of him that hath iurisdiction, another of him againe, or of some other of that iurisdiction, and doe bring it into the iurisdiction wherein I dwell, that by equall wrong I may come to haue equall right. The manner of represalia, and that we call Withernam, is not altogether one: but the nature of them both is as I haue described, and the proper signification of the words doe not much differ.

But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at full liberty, and maxime ingenui, yet by annexing a condition to the Land, there is meanes to bring the owners and possessors thereof into a certaine seruitude, or rather libertinity: That the tenants beside paying the rent accustomed, shal owe to the Lord a certaine faith, duty, trust, obe-

obedience: and (as we terme it) certaine ſeruice, as libertus, or Cliens patrono: which becauſe it doth not conſiſt in the perſons, for the reſpect in them doth not make them bond, but in the land and occupation thereof, it is more properly expreſſed in calling the one Tenant, the other Lord of the fée, then eyther libertus or cliens can doe the one, or patronus the other: for theſe words touch rather the perſons, and the office and duty betwéene them, then the poſſeſſions: but in our caſe leauing the poſſeſſion and land, all the obligation of ſeruitude and ſeruice is gone.

Another kinde of ſeruitude or bondage is vſed in England for the neceſſitie thereof, which is called apprentice-hood. But this is onely by couenant, and for a time, and during the time, it is *vera ſeruitus*. For whatſoeuer the Apprentice getteth of his owne labour, or of his maſters occupation or ſtocke, he getteth to him whoſe Apprentice he is, he muſt not lie forth of his maſters doores, he muſt not occupie any ſtocke of his owne, nor marry without his maſters licence, and he muſt doe all ſeruile offices about the houſe, and be obedient to all his maſters commandements, & ſhall ſuffer ſuch correction as his maſter ſhall thinke méete, and is at his maſters cloathing and nouriſhing, his maſter being bound onely to this which I haue ſaid, and to teach him his occupation, and for that he ſerueth ſome, for ſeuen or eight yeares, ſome nine or ten yeares, as the maſters and the friends of the young man ſhall thinke méete, or can agrée: altogether (as Polidore hath noted) quaſi pro emptitio ſeruo. Neuertheleſſe, that neither was the cauſe of the name Apprentice, neither yet doth the word betoken that which Polidore ſuppoſeth, but it is a French word, and betokeneth a learner or a ſcholler.

Apprendre in French is to learne, and Apprentize is as much to ſay in French (of which tongue wee borrowed this word, and many more other) as Diſcipulus

in Latine: Likewise he to whom he is bound, is not called the Lord, but his master, as ye would say his teacher. And the pactions agréed vpon, be but in writing, signed, and sealed by the parties, and registred for more assurance. Without being such an Apprentice in London, and seruing out such a seruitude in the same Citie for the number of yeares agréed vpon, by order of the Citie amongst them, no man being neuer so much borne in London, and of Parents Londoners, is admitted to be a Citizen or fréeman of London: the like is vsed in other great Cities of England. Besides Apprentices, others be hired for wages, & be called seruants or seruing men and women throughout the whole Realme, which be not in such bondage as Apprentices, but serue for the time for daily ministerie, as serui and ancillæ did in the time of gentilitie, and be for other matters in liberty as full free men and women.

The sons of free mē of London are also free by birth, according to the custome.

But all seruants, labourers, and others not married must serue by the yeare: and if he be in couenant, he may not depart out of his seruice without his masters licence, and he must giue his master warning that hee will depart one quarter of a yeare before the terme of the yeare expireth, or else he shall be compelled to serue out another yeare. And if any young man vnmaried be without seruice, he shall be compelled to get him a master, whom he must serue for that yeare, or else he shall be punished with stockes and whipping, as an idle vagabond. And if any man married, or vnmaried, not hauing rent or liuing sufficient to maintaine himself, doe liue so idly, he is enquired of, and sometime sent to the Jayle, sometime otherwise punished as a sturdie vagabond: so much our policy doth abhorre idlenes. This is one of the chiefe charges of the Justices of peace in euerie shire. It is taken for vngentlenesse, dishonour, and a shew of enmitie if any Gentleman do take another Gentlemans seruant

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(although his master doe put him away) without some certificate from his master, either by word or writing that he hath discharged him of his seruice. That which is spoken of men seruants, the same is also spoken of women. So that all youth that hath not sufficient reuenues to maintaine it selfe, must needs with vs serue, and that after an order as I haue written. Thus necessity & want of bondmen hath made men to vse free men as bondmen to all seruile seruices: but yet more liberally and freely, and with a more equality and moderation, than in time of gentility slaues and bondmen were wont to be vsed, as I haue said before. This first and latter fashion of temporall seruitude, and vpon paction, is vsed in such Countries as haue left off the old accustomed manner of seruants, slaues, bondmen, and bondwomen, which was in vse before they had receiued the Christian faith. Some after one sort, and some eyther more or lesse rigorously, according as the nature of the people is enclined, or hath deuised amongst themselues, for the necessitie of seruice.

## Chap. XI.

Of the Court which is Spirituall or Ecclesiasticall, and in the booke of Law Court Christian, Curia Christianitatis.

The Archbishops and Bishops haue a certaine peculiar iurisdiction vnto them, especially in foure maner of causes: Testaments and legations, Tithes & mortuaries, marriage and adultery or fornication, and also of such things as appertaine to orders amongst themselues & matters concerning religion. For as it doth appeare, our Ancestors hauing the Common-wealth before ordained & set in frame, when they did agree to receiue the true & Christian Religion, & that which was established

before, and concerned externe policy (which their Apostles, Doctors, and Preachers did allow) they held & kept still with that which they brought in the new. And those things, in keeping whereof they made conscience, they committed to them to be ordered and governed as such things of which they had no skill, and as to men in whom for the holines of their life and good conscience, they had a great and sure confidence. So these matters be ordered in their Courts, & after the fashion and maner of the law ciuill, or rather common, by citation, libell *contestationem litis*, examination of witnesses priuily, by exceptions, replications a part and in writing, allegations, matters by sentences, giuen in writing by appellations, from one to another, as well *a grauamine* as *a sententia definitiua* and so they haue other names, as Proctors, Aduocates, Assessors, ordinaries, and commissiones &c. farre from the manner of our order in the Common law of England, and from that fashion which I haue shewed you before. Wherefore if I say the Testament is false and forged, I must sue in the spirituall Law, so also if I demand a legacie: but if I sue the Executor or Administrator, which is he in our Law, who is in the Ciuill Law, *heres or bonorum mobilium possessor ab intestato*, for a debt which the dead ought mee, I must sue in the Temporall Court. These two Courts the Temporall and the Spirituall, be so deuided, that whosoeuer sueth for any thing to Rome, or in any spirituall Court for that cause or action, which may be pleaded in the Temporall Court of the Realme, by an old Law of England, he falleth into a *premunire*, that is, he forfaiteth all his goods to the Prince and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the Scribe, the Procuror, and Assessor which receiueth and doth maintaine that vsurped pleading, doth incurre the same danger. Whether the word *præmunire* doth betoken that

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the autoritie and iuriſdiction of the Realme is prouided for before, and defended by that law, and therfore it hath that name *præmunire* or *præmuniri*. or becauſe that by that law ſuch an attempter hath had warning giuen before to him of the danger, into which he falleth by ſuch attempt. and then *præmunire* is barbarouſly written for *præmunere*, *præmuniri* (as ſome men haue held opinion) I will not define: the effect is as I haue declared: and the Law was firſt made in King Richard the ſeconds time, and is the remedie which is vſed when the ſpirituall iuriſdiction will goe about to encroach any thing vpon the Temporall Courts. Becauſe this Court or forme which is called *curia chriſtianitatis*, is yet taken as appeareth for an externe and forraine Court, and differeth from the pollicie and manner of gouerment of the Realme, and is an other Court (as appeareth by the act and writ of *præmunire*,) than *curia regis aut reginæ*: yet at this preſent this Court as well as others, hath her force, power, authority, rule, and iuriſdiction, from the royall Maieſty, and the Crowne of England, and from no other forraine potentate or power vnder God, which being granted (as in deed it is true) it may now appeare by ſome reaſon that the firſt ſtatute of *præmunire*, whereof I haue ſpoken, hath now no place in England, ſeeing there is no pleading *alibi quam in curia regis ac reginæ*.

I haue declared ſummarily as it were in a chart or map or as Ariſtotle termeth it ὡς ἐν πίνακι the forme and manner of gouernment of England, and the pollicy therof, and ſet before your eyes the principall points wherein it doth differ from the pollicy or gouernment at this time vſed in France, Italy, Spaine, Germanie, and all other Countries, which doe follow the Ciuill Law of the Romans, compiled by Iuſtinian into his Pandects & Codr; not in that ſort, as Plato made his Common wealth, or Xenophon his kingdome of Perſia, nor as Sir Thomas More

More his Vtopia, being fained Common-wealthes, such as neuer was nor shall be, vaine imaginations, fantasies of Philosophers, to occupie the time, and to exercise their wits: but as England standeth, and is gouerned at this day the eight and twentie of March Anno. 1565. in the seuenth yeare of the raigne and administration thereof by the most vertuous and Noble Queene Elizabeth, daughter to King Henrie the eight, and in the one and fiftieth yeare of mine age, when I was Ambassadour for her Maiestie, in the Court of France, the scepter whereof at that time the noble Prince and great hope Charles Maximilian did hold, hauing then raigned foure yeares. So that whether I write true or not, it is easie to be seene with eyes (as a man would say) and felt with hands. Wherefore this being as a picture or table of a Common-wealth truly laid before you, not fained by putting a case: let vs compare it with Common-wealths which be at this day in esse, or doe remaine described in true Histories, especially in such points wherein the one differeth from the other, to see who hath taken righter, truer, and more commodious way to gouerne the people as well in warre as in peace. This will be no illiberall occupation for him that is a Philosopher, and hath a delight in disputing, nor vnprofitable for him who hath to doe, and hath good will to serue the Prince and Common-wealth, in giuing Counsaile for the better administration thereof.

Thomas Smith.

# THE COMMON-WEALTH OF *ENGLAND*, AND THE MANER OF Goùernement thereof.

COMPILED BY THE HONOVRABLE Sir THOMAS SMITH, Knight, Doctor of both Lawes, *and one of the principall Secretaries vnto two moſt worthy* Princes, King EDWARD, and Queene ELIZABETH.

With new Additions of the chiefe Courts in ENGLAND, *And the Offices thereof by the ſaid Author. Alſo a Table* added thereto, of all the principall matters contained in this Treatiſe.

*Newly Corrected and Amended.*

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# To the Reader.

TO conceale the graces inſpired by God, or the gifts ingraffed by nature, or the vertues atchieued vnto our ſelues by induſtrie, in all ages, and of all wiſe men, was accounted vndutifulneſſe, vnkindneſſe, and impietie vnto that Commonwealth, in the which, and vnto the which we are both bredde and borne: but to ſuppreſſe the worthy workes of any Authour, may iuſtly bee iudged not onely iniurie to the perſon, but euen enuie at the whole world. Wherefore, chauncing vpon this ſhort diſcourſe compiled by the Honourable Knight Sir Thomas Smith, and conſidering that the ſame could not but be a great light to the ignorant, and no leſſe delight vnto the learned in the Lawes and Policie of ſundrie Regiments: I thought it part of my duetie, as well for the reuiuing of the fame of ſo notable a man, as for the publike imparting of ſo pithy a Treatiſe, to preſent the ſame vnto thy indifferent and diſcreet iudgement. Wherein, although the errours and raſhneſſe of ſcribes, appearing in the contrarietie, and corruption of Coppies, hauing both by the length of time ſince the firſt making, as alſo by the often tranſcripting, might iuſtly haue beene mine excuſe, or rather diſcharge: yet weighing the authoritie of the Au-

*thor together with the grauity of the matter, I made no doubt but that the reuerence due vnto the one, and the recompense deserued by the other, would easily counterpaile all faults committed by a Clarke and Writer. And whereas some termes or other matters may seeme to dissent from the vsuall phrase of the common lawe of this Realme: notwithstanding, to him that will consider that the profession of the maker was principally in the ciuill lawes, and therfore not to be expected as one excellent in both, & also that the finishing of this worke was in Fraunce, farre from his Library, and in an ambassage, euen in the midst of waighty affaires, it cannot, nor ought not without great ingratitude be displeasant, or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale, and this honorable mans trauaile, assuring thy selfe that the same framed by an expert workmaister, and forged of pure and excellent mettall, will not faile in proning to be a commodious instrument.*

Vale

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# THE MANER OF GOVERNMENT Or Policie of the Realme of ENGLAND.

## CHAP. I.
### Of the diuerſities of Common-wealths or Gouernments.

THey that haue written heere-to-fore of Common wealths, haue brought them into three moſt ſimple and ſpeciall kindes or faſhions of gouernment. The firſt, where one alone doth gouerne, is called of the Græks Μοναρχία, The ſecond, where the ſmaller number, commonly called of them Ἀριστοκρατία, and the third, where the multitude doth rule, Δημοκρατία. To rule is vnderſtood to haue the higheſt and ſupreame authoritie of commaundement. That part or member of the common-wealth is ſaide to rule, which doth controll, correct and direct all other members of the Common wealth. That parte which doth rule, define and commaunde according to the forme of the gouernement, is taken in euerie Com-

Democrat. Monarchia Ariſtocratia.

mon-wealth to bee iuſt and Law: As a rule is alway to bee vnderſtood to bee ſtraight, and to which all woꝛks are to be conforꝛmed, and by it to be iudged: I do not meane the Lesbians rule, which is conforꝛmed to the ſtone: but the right rule whereby the Artificer and the Architect do iudge the ſtraightnes of euery mans woꝛke, hee to be reckoned to make his woꝛke perfecteſt, who goeth neereſt to the ſtraightneſſe.

## Chap. II.

What is iuſt or Lawe in euery Common-wealth or gouernment.

NOw it doth appeare, that it is profitable to euery Common-wealth (as it is to euery thing generally and particularly) to be kept in her moſt perfect eſtate. Then if that part which doth beare the rule, doe commaund that which is profitable to it, and the commaundement of that part which doth rule on that ſoꝛt, is to be accepted in euery Common-wealth reſpectiuely to be iuſt (as wee haue ſaid beforꝛe) it muſt needes follow, that the definition which Thraſimachus did make, that to be iuſt, which is the profite of the ruling and moſt ſtrong part (if it be meant of the citie oꝛ Common-wealth) is not ſo farre out of the way, if it be ciuilly vnderſtoode, as Plato would make it. But as there is profit, and likelihood of profit, ſo there is right and likelihood of right. And as well may the ruling and ſoueraigne part commaund that which is not his profite, as the iuſt man may offend (notwithſtanding his iuſt & true meaning) when he would amend that which is amiſſe, and helpe the Common-wealth, and to doe good vnto it. Foꝛ in as much as hée attempteth to doe contrary to the Lawe which is already put, hée therefoꝛe by the Law is iuſtly condemned, becauſe his doing is contrary to the

Iuſt.

to the Law and the ordinance of that part which doth commaund.

## Chap. III.

### Another Diuiſion of Common-wealths.

But this matter yet taketh another doubt: for of theſe manner of rulings by one, by the fewer part, and by the multitude or greater number, they which haue more methodically and more diſtinctly & perfitly written vpon them, doe make a ſubdiuiſion: and diuiding each into two, make the one good and iuſt, and the other euill and vniuſt: as, where one ruleth, the one they call a King, or Βασιλεὺς, the other τύραννον, a Tyrant: where the fewer number, the one they name a Gouerning of the beſt men Ἀριστοκρατίαν or *Remp. Optimatum*, the other of the vſurping of a few Gentlemen, or a few of the richer and ſtronger ſort, ὀλιγαρχίαν, or *Paucorum Poteſtatem*: and where the multitude doth gouerne, the one they call a Common-wealth by the generall name πολιτείαν, or the rule of the people Δημοκρατία, the other, the rule or the vſurping of the popular, or raſcall or viler ſorte, becauſe they bee moe in number, Δημοκρατίαν ἀπαρτίαν.

## Chap. IIII.

### Examples of changes in the manner of Gouernment.

IN Common-wealths which haue had long continuiance, the diuerſities of times haue made all theſe maners of ruling or Gouernement to bee ſæne: as in *Rome*, Kings Romulus, Numa, Seruius, tyrants, Tarquinius, Sylla, Cæſar: the rule of beſt men, as in time when the firſt Conſuls were: and the vſurping of a few, as of the Senators after the death of Tarquinius, and before the ſucceſſion or

the Tribunate, and manifestly in the Decem-uirate, but more pernitiously in the Triumuirate of Cæsar, Crassus, and Pompeius: and afterward in the Triumuirate of Octauius, Antonius, and Lepidus: The Common-wealth and rule of the people, is in the expulsing of the Decemuiri, and long after, especially after the lawe was made, eyther by Horatius, or (as some would haue it) Hortensius *quod plebs sciuerit, id populum teneat*: And the ruling and vsurping of the popular and rascall, as a little before *Sylla* his raigne, and a little before Caius Cæsars raigne. For the vsurping of the rascality can neuer long endure, but necessarily hæredeth, and quickly bringeth forth a tyrant. Of this hath Athens, Siracuse, Lacedemon and other olde ancient ruling Cities had experience, and a man need not doubt but that other Common-wealths haue followed the same rate. For the nature of man is, neuer to stand still in one manner of estate, but to grow from the lesse to the more, and decay from the more againe to the lesse, till it come to the Fatal end and destruction, with in any turnes, and turmoiles of sicknes, and recouering, seldome standing in a perfect health neither of a mans bodie it selfe, nor of the politicke body which is compact of the same.

## Chap. V.

### Of the question what is right and iust in a Common-wealth.

So when the Common-wealth is euill gouerned by an euill ruler and vniust (as in the three last named which bee rather a sicknesse of the politicke bodie, than perfect and good estates) if the lawes bee made, as most like they bee alwaies, to maintaine that estate: the question remaineth, whether the obedience of them be iust, and the disobedience wrong? the profite & conseruation of that estate right

right and iuſtice, or the diſſolution? and whether a good & vpright man, and louer of his countrey ought to maintaine and obey them, or to ſeeke by all meanes to aboliſh them? which greate and haughty courages haue often attempted: as Dion to riſe vp againſt Dionyſius, Thraſibulus againſt the thirty tyrants, Brutus and Caſſius againſt Cæſar, which hath bẽn cauſe of many commotions in Common-wealths: whereof the iudgement of the common people is according to the euent and ſucceſſe: of them which be learned according to the purpoſe of the doers, and the eſtate of the time then preſent. Certaine it is, that it is alwaies a doubtfull and hazardous matter to meddle with the changing of lawes and gouernement, or to diſobey the orders of the rule or gouernement, which a man doth finde already eſtabliſhed.

## Chap. VI.

That Common-wealths or gouernments are not moſt commonly ſimple, but mixt.

NOw although the gouernments of Common-wealths bee thus diuided into three, and cutting each into two, ſo into fiue: yet you muſt not take that ye ſhall find any Common-wealth or gouernment ſimple, pure, and abſolute in his ſort and kind, but as wiſe men haue diuided for vnderſtandings ſake, and fantaſied foure ſimple bodies which they call elements: as fire, ayre, water, earth, and in a mans body foure complexions or temperatures, as cholericke, ſanguine, flegmatique and melancholicke: not that ye ſhall finde one vtterly perfect without mixtion of the other, for that nature almoſt will not ſuffer: but vnderſtanding doth diſcerne each nature as in his ſinceritie: ſo ſeldome or neuer ſhall you finde common-wealths or gouernments which

are absolutely and sincerely made of any of them aboue named, but alwaies mixed with another, and hath the name of that which is more, and ouer-ruleth the other alwaies or for the most part.

## Chap. VII.

### The definition of a King, and of a Tyrant.

Where one person beareth the rule, they define that to bee the state of a King, who by succession or election commeth with the good will of the people to that Gouernement, and dooth administer the Common-wealth, by the Lawes of the same, and by equity, and doth seeke the profit of the people as much as his owne. A Tyrant they name him, who by force commeth to the monarchy against the will of the people, breaketh lawes already made, at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe his faction and kindred. These definitions doe containe three differences: the obtaining of the authoritie the manner of administration thereof, and the Butte or marke whereunto it doth tend and shoote. So as one may bee tyrant by his entry and getting of the Gouernment, and a King in the administration thereof. As a man may thinke of Octauius, and peraduenture of Sylla, For they both comming by tyrannie and violence, to that state, did seeme to trauaile very much for the better order of the Common-wealth: howbeit, either of them after a diuers maner. Another may bee a King by entry and a tyrant by administration, as Nero, Domitian, and Commodus: for the Empire came to them by succession. But their administration was vtterly tyrannicall, of Nero after fiue yeeres, of Domitian and Commodus very shortly vpon their new honour. Some both in the comming

ming to their Empire, & in the Butt the which they shoot at, be Kings, but the manner of their ruling is tyrannicall, as many Emperors after Cæsar and Octauius, and many Popes of Rome. The Emperors claime this tyrannicall power by pretence of that Rogation or *Plebiscitum*, which Caius Cæsar or Octauius obtained, by which all the people of Rome did conferre their power and authority vnto Cæsar wholy.

The Pope groundeth his from Christ (*cui omnis potestas data est in cælo & in terra*) whose successor he pretendeth to be: yet the generall Councels make strife with him, to make the Popes power either *Aristocratiam*, or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men doe iudge the same of the Kings of Fraunce and certaine Princes of Italy and other places, because they make and abrogate lawes and Edicts, lay on tributes and impositions of their owne will, or by the priuate counsell and aduise of their friends and fauourers onely, without the consent of the people. The people I call that which the word *Populus* doth signifie, the whole body, and the three estates of the Common-wealth: and they blame Lewes the xi. for bringing the administration royall of Fraunce, from the lawfull and regulats raigne, to the absolute and tyrannicall power and gouernment. He himselfe was wont to glorie and say, he had brought the crowne of Fraunce, *hors de page*, as one would say, out of wardship.

## Chap. VIII.

### Of the absolute King.

Other doe call that kind of administration which the Greeks do cal παμβασιλείαν, not tyrannie, but the absolute power of a King, which they would pretend that euery King hath, if hee would vse the same. The o-

ther they call βασιλείαν νόμιμον, or the royall power, reggulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessary: so in time of peace the same is very dangerous, as well to him that doth vse it, and much more to the people vppon whome it is vsed: whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to kepe the Dictatorishipp aboue fire monethes, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, Aristotle, (who of all writers hath most absolutely and methodically treated of the diuision and natures of common-wealthes) maketh this sort of gouernment to be one kinde of kinges. But all commeth to one effect: for at the first all kings ruled absolutely, as they who were either the heades and most auncient of their families, deriued out of their owne bodies, as Adam, Noe, Abraham, Iacob, Esau, reigning absolutely ouer their owne children & bondmen, as reason was: or else in the rude world amongst barbarous & ignorant people, some one then, whome God had endued with singular wisdome to inuent things necessary for the nourishment and defence of the multitude, & to administer iustice, did so farre excell other, that all the rest were but beastes in comparison of him: and for that excellencie, willingly had this authority giuen him of the multitude, and of the Gentiles when he was dead and almost when he was yet liuing, was taken for a God, of others for a Prophet. Such among the Iewes were Moses, Ioshua, and the other Iudges, as Samuel, &c. Romulus, and Numa amongst

amongſt the Romanes, Lycurgus and Solon, and diuers others among the Grecks, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Grecks, is called τυραννις which of it ſelfe at the firſt was not a name odious: But becauſe they who had ſuch rule, at the firſt, did for the moſt part abuſe the ſame, waxed inſolend and proud, vniuſt, and not regarding the Common-wealth, committed ſuch acts as were horrible and odious: As killing men without cauſe, abuſing their wiues and daughters, taking and ſpoyling all mens goods at their pleaſures, and were not Shepheards as they ought to bee, but rather robbers and deuourers of the people, whereof ſome were contemners of God, as Dioniſius, otherwiſe they liued like Diuels, and would yet be adored and accounted for Gods: as Caius Caligula and Domitian: that kinde of adminiſtration, and maner alſo, at the firſt not euill, hath taken the ſignification, and definition of the vice of the abuſers, ſo that now both in Greeke, Latine, and Engliſh, a tyrant is counted he, who is an euil King, and who hath no regard to the wealth of his people, but ſeeketh onely to magnifie himſelfe, and his, and to ſatisfie his vicious and cruell appetite without reſpect of God, of right, or of the Law: becauſe that for the moſt part, they which haue had that abſolute power, haue bene ſuch.

## Chap. IX.

### Of the name of King, and the adminiſtration of England.

That which we call in one ſillable King in Engliſh, the olde Engliſhmen, and the Saxons, from whom our tong is deriued, to this day call in two ſillables, Cyning, which whether it commeth of Cen or Ken, which

betokeneth to know and vnderstand, or Can, which betokeneth to be able, or to haue power. I cannot tell. The participel absolute of the one wee vse yet, as when wee say, a cunning man *Vir prudens aut sciens*: the verbe of the other, as I can doe this, *possum hoc facere*. By olde and ancient Histories that I haue read, I doe not vnderstand that our Nation hath vsed any other generall authority in this Realme, neither *Aristocraticall* nor *Democraticall*, but onely the royall and Kingly Maiestie which at the first was deuided into many and sundry Kings, each absolutly raigning in his Country, not vnder the subiection of other, till by fighting the one with the other, the ouercommed alwaies falling to the augmentation of the vanquisher and ouercommer: At the last the Realme of England grew into one Monarchie. Neither any one of those Kings, neither he who first had all, toke any inuestiture at the hands of the Emperour of Rome, or of any other superiour or forraine Prince, but held of God to himselfe, and by his sword, his people and Crowne, acknowledging no Prince on earth his superior, and so it is kept and holden at this day: Although King Iohn (by the rebellion of the Nobilitie, aided with the Dolphin of France his power) to appease the Pope, who at that time possessing the consciences of his subiects, was then also his enemie, and his most greiuous torment (as some Histories doe witnesse) did resigne the Crowne to his Legate Pandulphus, and toke it againe from him, as from the Pope, by faith and homage, and a certaine tribute yerely. But that act being neither approued by his people, nor established by act of Parliament, was forthwith, and euer sithence taken for nothing, either to binde the King, his successors, or subiects.

Chap.

## Chap. X.

### What is a Common-wealth, and the parts thereof.

TO bee vnderstoode hereafter, it is necessary yet to make a third diuision of the common-wealth by the parts thereof. A common-wealth is called a societie or Common doing of a multitude of free men, collected together, and vnited by common accord and couenants among themselues, for the conuersation of themselues, as well in peace as in warre. For properly an Hoast of men is not called a Common-wealth, but abusiuely, because they are collected but for a time, & for a fact: which done each diuideth himselfe from others as they were before. And if one man had, as some of the old Romanes had (if it bee true that is written) fiue thousand, or ten thousand bondmen whom he ruled well, though they dwelled all in one City, or were distributed into diuers villages, yet that were no Common-wealth: for the bondman hath no communion with his maister, the wealth of the Lord is onely sought for, and not the profite of the slaue or bondman. For as they who write of these things haue defined, a bondman or slaue as it were) sauing life or humane reason) is but the instrument of his Lord, as the axe, the saw, the chessill & gowge is of the Carppenter. Truth it is, the Carpenter looketh diligently to saue, correct, & amend al these: but it is for his owne profit, and in consideration of himselfe, not for the instrument sake. And as these be instruments of the Carpenter, so the Plow, the Cart, the Horse, Oxe, or Asse, be instruments of the Husbandman: and though one Husbandman had a great number of all these, and looked well to them, it made no Common-wealth, nor could not be so called. For the priuate wealth of the husbandman is only regarded, and there is no mutuall society or portion, nor law, nor pleading betweene

the one and the other. And (as he saith) what reason hath the pot to say to the Potter, why madest thou mee thus? or why dost thou breake me after thou hast made me? euen so is the bondman or slaue which is bought for money, for he is but a reasonable and liuing instrument, the possession of his Lord & master, reckoned among his goods, not other wise admitted to the society euill, or Common-wealth, but is part of the possession and goods of his Lord. Wherefore, except there bee other orders and administrations amongst the Turkes, if the prince of the Turks (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely free men) a man may doubt whether his administration bee to be accounted a Common-wealth, or a Kingdome, or he rather to bee reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whome there is no right, Lawe, nor Common-wealth compact, but onely the will of the Lord and Signior. Surely none of the old Greeks would call this fashion of gouernment. *Remp.* or Πολιτείαν for the reasons which I haue declared before.

## Chap. XI.

### The first sort, or beginning of an house or Family, called οἰκονομία.

Then if this be a society, and consisteth onely of free men, the least part thereof must be two. The naturallest, and first coniunction of two, toward the making of a further society of continuance, is of the husband and of the wife, after a diuers sort, each hauing care of the family, the Man to get, to trauaile abroad, to defend; the wife to saue that which is gotten, to tarry at home, to distribute that which commeth of the husbands labour, for the nurriture of the children: and family of them both

and

and to keepe all at home neate and cleane. So nature hath forged each part to his office: the man stern, strong, bold, aduenturous, negligent of his beauty, and spending. The woman weake, fearefull, faire, curious of her beauty and sauing. Either of them excelling other in wit and wisedome, to conduct those things which appertaine to their office, and therefore where their wisedome doth excell, therein it is reason that each should gouerne. And without this society of man and woman, the kind of man could not long endure. And to this society men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another and so to liue in couple, then to adhere himselfe with many. Although of all things, or liuing creatures, a man doth shew himselfe most politique, yet can hee not well liue without the society and fellowship ciuill. Hee that can liue alone, saith Aristotle, is either a wild beast in a mans likenes, or else a God rather then a man. So then the house and family is the first & most naturall (but priuate) apparance of one of the best kinds of a common-wealth, that is called Aristocratia, where a fewe, and the best do gouerne: & where not one alwaies, but somtime and in some thing another doth beare the rule. Which to maintaine for his part. God hath giuen to the man greater wit, bigger strength, and more courage, to compell the woman to obey by reason, or force: and to the woman beauty, faire countenance, and sweet words, to make the man obey her againe, for loue. Thus each obayeth and commaundeth other, and they two together rule the house. The house I call heere the man, the woman, their children, their seruants bond and free, their cattle, their houshold stuffe, and all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocratia, but Metapho-

Domus, seu familia.

taphorice, for it is but an house, and little sparke resembling as it were that gouernement.

## Chap. XII.

### The first and naturall beginning of a Kingdome: in Greeke βασιλεία

But for so much as it is the nature of all things, to encrease or decrease: this house thus encreasing & multiplying by generation, so that it cannot wel be comprehended in one habitation, & the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out into couples as it were by prouining or propagation. And the child by mariage beginneth as it were to roote towards the making of a new stocke, and thereupon another house or family. So by this propagation or prouining first of one, and then of another, and so from one to another, in space of time of many houses was made a streete or village: of many streetes and villages ioined together, a Citie or Borough. And when many Cities, Boroughs, and Villages, were by common and mutuall consent for their conuersation ruled by that one and first father of them al, it was called a Nation or Kingdome. And this seemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all ciuill societies. For so long as the great Grandfather was aliue and able to rule, it was vnnaturall for any of his sonnes or of-spring to striue with him for the superiority, or to goe about to gouerne, or any wise to dishonor him, from whom he had receiued life and being. And therefore such a one doth beare the first and naturall example of an absolute, and perfect King. For he loued them as his owne children and Nephewes, cared for them as members of his

Prouining, or propagation is when a man layeth a brãch of a Vine or Osier, or any other tree into the ground so that it taketh root of it selfe, and may liue though it bee cut clean from the first roote or stock Pagus Oppidum. Ciuitas. Regnũ.

his owne body, prouided for them as one hauing by long time more experience then any one, or all of them. They againe honoured him as their father of whose body they came, obayed him for his greate wisedome and fore-cast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. Ye againe vsed nouriture: For each paine put vpon them, hee esteemed as laide vpon himselfe.

## Chap. XIII.

### The first and naturall beginning of the rule of a few of the best men, called in Greeke Αριστοκρατία.

But when that great Graundfather was dead, the sonnes of him, and brethren amongst themselues, not hauing that reuerence to any, nor confidence of wisdome in any one of them, nor that trust the one to the other, betweene whome (as many times it fareth with brethren) some strifes and brawlings had before arisen: To defend themselues yet from them which were Welch e strangers; necessarily agreed among themselues to consult in common, and to beare rule for a time in order, now one: and now another: so that no one might beare alwaies the rule, nor any one be neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the next (being either wiser of himselfe, or else by his brothers error and fault) amended it. And in the meane while, at diuers and most times when vrgent necessity did occurre, they consulted all those heades of families together within themselues, how to demeane and order their matters best for the conseruation of themselues, and each of their families generally and particularly. Thus a few being heades and the chiefe of their families, equall in birth and Nobilitie, and not much different in riches,

gouerned their owne houſes, and the deſcendants of them particularly, and conſulted in common vpon publique cauſes, agréeing alſo vpon certaine lawes and orders to be kept amongſt them. So the beſt, chiefeſt, and ſageſt did rule, and the other part had no cauſe to ſtriue with them, nor had no cauſe nor apparance to compare with any of them, neither for age nor diſcretion, nor for riches or nobility. The rulers ſought each to kéepe and maintaine their poſteritie, as their ſonnes and Nephewes, and ſuch as ſhould ſuccéede them, and carry their names when they were dead, and ſo render them being mortall by nature, immortall by their fame and ſucceſſion of poſterity: hauing moſt earneſt care to maintaine ſtill this their couſinage and common family, as well againſt forraigne and barbarous Nations, which were not of their progeny, tongue, or Religion, as againſt wilde and ſauage beaſtes. This ſéemeth the natural courſe and beginning, or image of that rule of the fewer number, which is called of the Gréekes Ἀριστοκρατία, and of the Latines Optimatum reſpublica.

## Chap. XIIII.

### The firſt originall, or beginning of the rule of the multitude called πολιτεία or Δημοκρατία.

NOw, as time bringeth an end of all things, theſe brethren being all dead, and their offſpring increaſing daily to a great multitude, and the reuerence due to the old fathers in ſuch and ſo great number of equals fayling, by the reaſon of the death or doting of the Elders: each owing their merits of education a part to their Fathers and Graundfathers, and ſo many ariſing, and ſuch equalities among them, it was not poſſible that they ſhould be content to be gouerned by a few. For two things being ſuch as for the which men in ſocietie and

league

league moſt ſtriue, that is, honour and profit, no men of frée courage can be contented to be neglected therein, ſo that they were faine of neceſſitie to come to that, that the more part ſhould beare the price away in election of Magiſtrates and rulers. So that either by courſe or by lot, each man in turne might be receiued to beare rule, and haue his part of the honour: and (if any were) of the profite which came by adminiſtration of the Common-wealth. For whoſoeuer came of that olde great Graundfathers race, he accounted himſelfe as good of birth as any other. For ſeruice to the Common-wealth, all, or ſuch a number had done it, as they could not be accounted few. And if a few would take vpon them to vſurpe ouer the reſt, the reſt conſpiring together would ſone be Maiſters of them and ruinate them wholy. Whereupon neceſſarily it came to paſſe, that the Common-wealth muſt turne and alter as before from one to a few, ſo now from a few to many and the moſt part, each of theſe yet willing to ſaue the politicke bodie, to conſerue the authority of their nation, to defend themſelues againſt all other, their ſtrife being onely for Empire and rule, and who ſhould doe beſt for the Common-wealth, whereof they ſhould haue experience made by bearing office and being Magiſtrates. This I take for the firſt and naturall beginning of the rule of the multitude, which the Grecians called Δημοκρατία: the Latines, ſome *Reſpublica* by the generall name, ſome *Populi poteſtas*, ſome *Cenſus poteſtas*, I cannot tell howe latinely.

## Chap. XV.

That the Common-wealth or policy, muſt be according to the nature of the people.

By this proceſſe and diſcourſe it doth appeare that the mutations and changes of faſhions of gouernment in

Common wealths bee naturall, and doe not alwayes come of ambition or malice: And that according to the nature of the people, so the Common-wealth is to it fit and proper. And as all these three kindes of Common-wealths are naturall, so when to each party or especie and kinde of the people, that is applyed which best agreeth, like a garment to the bodie, or shoe to the foote, then the bodie politicke, is in quiet, and findeth ease, pleasure and profite. But if a contrarie forme be giuen to a contrarie maner of people, as when the shoe is to little or to great for the foote, it doth hurt and incomber the conuienent vse thereof, so the free people of nature tyrannized or ruled by one against their willes, were he neuer so good, either faile of courage and ware seruile, or neuer rest vntill they either destroy the King and them that would subdue them, or be destroyed themselues. And againe, another sort there is, which without being ruled by one Prince, but set at libertie, cannot tell what they should doe, but either through insolencie, pride, and idlenes, will fall to robberie, and all mischiefe, and to scatter and dissolue themselues, or with foolish ambition and priuate strife consume one another, and bring themselues to nothing Of both these two we haue Historyes inough to beare witnesse, as the Grekes, Romanes, Samnites, Danes, Vandalles, and others Yet must you not thinke that all Common-wealths, administrations & rulings, beganne on this sort, by prouining or propagation, as is before written: But many times after a great battaile and long warre, the Captaine who led a multitude of people gathered peraduenture of diuers Nations and Languages, liking the place which he hath by force conquered, tarieth there, and beginneth a Common-wealth after this maner, and for the most part a Kingdome. As the Gothes and Lumbards in Italie, the Frenchman in Gaule, the Saracins in Spaine, and part of France, the Saxens

Græci.
Romani.
Samnites.
Vandali.
Dani.
Norwegi.
Sueci.

Saxons in great Britaine, which is now called England: Of which, when that one and chiefe Prince is dead, the nobler sort consult among themselues, and either chose another head and King, or diuide it into more heads and rulers, so did the Lumbards in Italy, and the Saxons in England: or take at the first a common rule and popular estate, as the Zwitzers did in their cantons and do yet at this day, or else admit the rule of a certaine few, excluding the multitude and communaltie, as the Paduans, Veronenses, and Venetians haue accustomed.

## Chap. XVI.

### The diuision of the parts and persons of the Common-wealth.

TO make all things yet cleere before, as we shall go, there ariseth another diuision of the parts of the Common-wealth. For it is not enough to say that it consisteth of a multitude, of houses and familes, which make streets and villages, and the multitude of the strétes and villages make townes, and the multitude of townes the Realme, and that free men be considered onely in this behalfe, as subiects and Citizens of the Common wealth, and not bondmen, who can beare no rule nor iurisdiction ouer freemen, as they who bee taken but as instruments and the goods and possessions of others. In which consideration also we doe reiect women, as those whom nature hath made to keepe home and to nourish their familie and children, and not to meddle with matters abroad, nor to beare office in a Citie or Common-wealth, no more than Children and infants: Except it be in such cases as the authoritie is annexed to the blood and progenie, as the Crowne, a Dutchy, or an Erledome: for there the blood is respected, not the age nor the sexe.

Whereby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being maried to a King, Duke or Earle, but by being the true, right and next successors in the dignitie, and vpon whom by right of the blood that title is descended: These I say, haue the same authoritie although they be women or children in that Kingdome, Dutchie, or Earledome, as they should haue had if they had beene men of full age. For the right and honour of the blood, and the quietnes and suertie of the Realme, is more to be considered, then either the tender age as yet impotent to rule or the sere not accustomed (otherwise) to intermeddle with publicke affaires, being by common intendment vnderstood, that such personages neuer dee lacke the councell of such graue and discréte men as bee able to supply all other defects. This (as I saide) is not enough: But the Diuision of these which be participant of the Common-wealth, is one way of them that beare office, the other of them that beare none: The first are called Magistrates, the second priuate men. Besides, the like was among the Romaines of *Patritii* and *Plebei*, the one striuing with the other a long time, the *Patritii* many yéeres excluding the *Plebei* from bearing rule, vntil at last al Magistrats were made common between them: yet was there another diuision of the Romans, into *Senatores*, *equites*, and *plebs*: the Créeks had also εὐγενεῖς καὶ Δημοτικούς. The French haue at this day, les nobles & la populaire, or gentill homes & villaines: we in England deuide our men commonly into foure sorts, Gentlemẽ, Citizens, Yeomen, Artificers and Labourers, of Gentlemen the first and cheife are the King, the Prince, Dukes, Marquises, Earles, Vicounts, Barrons, and these are called κατ' ἐξοχὴν, the Nobilitie, and all these are called Lordes and Noblemen: next to these be Knights, Esquires, and simple Gentlemen.

Chap.

## Chap. XVII.

### Of the first part of Gentlemen of England, called *Nobilitas Maior.*

Dukes, Marquises, Earles, Vicounts, and Barons either be created by the Prince, or come to that honor by being the eldest Sonnes, as highest and next in succession to their parents. For the eldest of Dukes sons during his fathers life is called an earle: an Earles sonne is called by the name of a Vicount or Barron, or els according as the creation is. The Creation I call the first donation and condition of the honor (giuen by the Prince for good seruice done by him, and aduancement that the Prince wil bestow vpon him) which with the title of that honour, is commonly (but not alwaies) giuen to him and to his heires, males onely: the rest of the sonnes of the Nobilitie, by the rigour of the lawe be but Esquires, yet in common speech, all Dukes, and Marquises sonnes, and the eldest sonne of an Earle be called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting such onely, as bee thereunto by some speciall office called. The Barrony or degree of Lordes, doth aunswere to the dignitie of the Senators of Rome, and the title of our Nobility to their *patritij*: when *patritij* did betoken *Senatores, aut Senatorum filios.* Census Senatorum was in Rome, at diuers times diuers, and in England no man is created a Barron, except he may dispend of yeerely reuenue one thousand pounds or one thousand marks at the least; Vicounts, Earles, Marquesses, and Dukes more, according to the proportion of the degree and honour, but though by chaunce hee or his sonne haue lesse, hee keepeth his degree: but if they decay by excesse, and bee not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted

Nobilitas maior.

Eldest sons of Dukes are not Earles by birth, but Lords, and take their place aboue Earles, and so are Earles Eldest sonnes in respect of Barrons. Esquires of honour, or Lords.

mitted the vpper house in the Parliament, although they keepe the name of Lord still.

## Chap. XVIII.

Of the second sort of Gentlemen, which may bee called Nobilitas minor, and first of Knights.

NO man is a Knight by succession, no not the King or Prince. And the name of Prince in England κατ' ἐξοχὴν, betokeneth the eldest sonne of Prince of Wales: although the King himselfe his eldest sonne, & all Dukes be called by generall name Princes. But as in France the Kings eldest son hath the tytle of Doulphin, and hee or the nert heyre apparant to the crowne is Monsire, so in England the Kings eldest sonne is called κατ' ἐξοχὴν the Prince. Knights therefore be not borne but made, either before the battaile to encourage them the more to aduenture their liues, or after the conflict, as aduancement for their hardinesse and manhood already shewed: or out of the warre for some great seruice done, or some good hope through the vertues which doe appeare in them. And they are made eyther by the King himselfe, or by his commission and royall authoritie giuen for the same purpose, or by his Lieutenant in the warres, who hath his royall and absolute power committed to him for that time. And that order seemeth to answere in part to that which the Romaines called *Equites Romanos*, differing in some points, and agreeing in other, as their Common-wealth and ours doe differ & agree: for neuer in all points one common-wealth doth agree with an other, no nor long time any one common-wealth with it selfe. For all changeth continually to more or lesse, and still to diuers and diuers orders, as the diuersity of times doe present occasion, and the mutability of mens wits doth inuent and assay new waies, to reforme and amend that wherein they doe finde

finde fault. *Equites Romani*, were chosen *ex censu*, that is according to their substance and riches. So be Knights in England most commonly, according to the yeerely reuenue of their lands, beeing able to maintaine that estate: yet all they that had *Equestrem censum*, *non legebantur Equites*. No more are all made Knights in England that may dispend a Knights land or fee, but they onely whome the King will so honour. The number of *Equites* was vncertaine, and so it is of Knights, at the pleasure of the Prince. *Equites Romani* had *equum publicum*. The Knights of England haue not so, but finde their owne horse themselues in peace-time, and most vsually in warres.

*Census Equester* was among the Romanes at diuers times of diuers value: but in England whosoeuer may dispende of his free landes fourty poundes starling of yeerely reuenue, by an olde lawe of England, eyther at the coronation of the King, or mariage of his daughter, or at the dubbing of the Prince Knight, or some such great occasion, may bee by the King compelled to take that order and honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some, who for causes are not thought worthy of that honour & yet haue abilitie, neither be made knights, though they would, and yet pay the fine of xl. li. sterling at that time when this order began, which maketh now Cxx. li. of currant mony of England: as I haue more at large declared in my booke of the diuersity of standards, or the valour of monies.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained *Equites and Plebem*: so when we in England doe say the Lords and the Commons: the Knights, esquires, and other Gentlemen, with

Citizens, Burgesses and Yeomen, be accounted to make the Commons. In ordaining of lawes, the Senate of Lords of England is in one house, where the Archbishops and Bishoppes also bee, and the King or Queene for the time being as chiefe, the Knights and all the rest of the Gentlemen, Citizens and Burgesses which bee admitted to consult upon the greatest affairs of the Realm, be in another house by themselues, and that is called the house of the Commons, as we shall more clearly describe when wee speake of the Parliament. Whereupon this word Knight is deriued, and whether it doe betoken no more but that which *Miles* doth in Latine, which is a Souldier, might bee mooued as a question. The word Souldier now seemeth rather to come of sold and payment and more to betoken a waged or hired man to fight, than otherwise, yet Cæsar in his Commentaries called Soldures in the tongue gallois, men who deuoted and swore themselues in a certaine band or oath one to another, and to the Captaine, which order if the Almaines did follow, it may be, that they who were not hired, but being of the Nation, vpon their owne charges, & for their aduancement, & by such common oath or band that did followe the warres, were (possibly) κατ' ἐξοχὴν called Knights or milites, and now among the Almaines some are called Lance knights, or souldiers of their band not hyred, although at this day they be for the most part hirelings. Or peraduenture it may be that they which were next about the Prince, as his guard and seruants, picked or chosen men out of the rest, being called in the Almaine language Knighten, which is as much to say as seruants: these men being found of good seruice, the word afterward was taken for an honor, and for him who maketh profession of Armes. Our language is so changed, that I dare make no iudgment thereof. Now we call him Knight in English, that the French calleth Cheualier, and the Latine *equitem* or

*eque-*

*equestris ordinis.*

And when any man is made a Knight, hée kneeling downe, is stroken of the Prince, with his sword naked, vpon the back or shoulder, the Prince saying, sus or sois Chevalier au nom de Dieu, and (in times past) they added S. George, and at his arising the Prince saith auaunceer. This is the manner of dubbing of Knightes at this present: and that terme dubbing, was the old terme in this point, and not creation. At the coronation of a King or Quéen, there be Knights of the Bath made, with long and more curious ceremonies. Knights bannerets are made in the fielde, with the ceremony of cutting of the poynt of his standart and making it as it were a banner: he being before a batcheler Knight, is now of a higher degrée, allowed to display his Armes in a banner as Barons doe. But this order is almost growne out of vse in England. But howsoeuer one be dubbed or made a Knight, his wife is by and by called a Ladie, as well as a Barons wife: hée himselfe is not called Lord, but hath to his name in common appellation added this sillable Sir, as if he before were named Thomas, William, Iohn, or Richard, afterward he is alwaies called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the terme which men giue to Knights in England. This may suffice at this time, to declare the order of Knighthood, yet there is another order of Knights in England, which be called the Knights of the Garter. King Edward the third, after he had obtained many notable victories, King Iohn of France, King Iames of Scotland, being both prisoners in the tower of London at one time, and King Henrie of Castile the bastard expulsed out of his realme, and Don Pedro restored vnto it by the Prince of Wales and Duke of Aquitaine called the black Prince, inuented a societie of honour, and made a choyce out of his owne realme and dominions, and all Christendome: and the